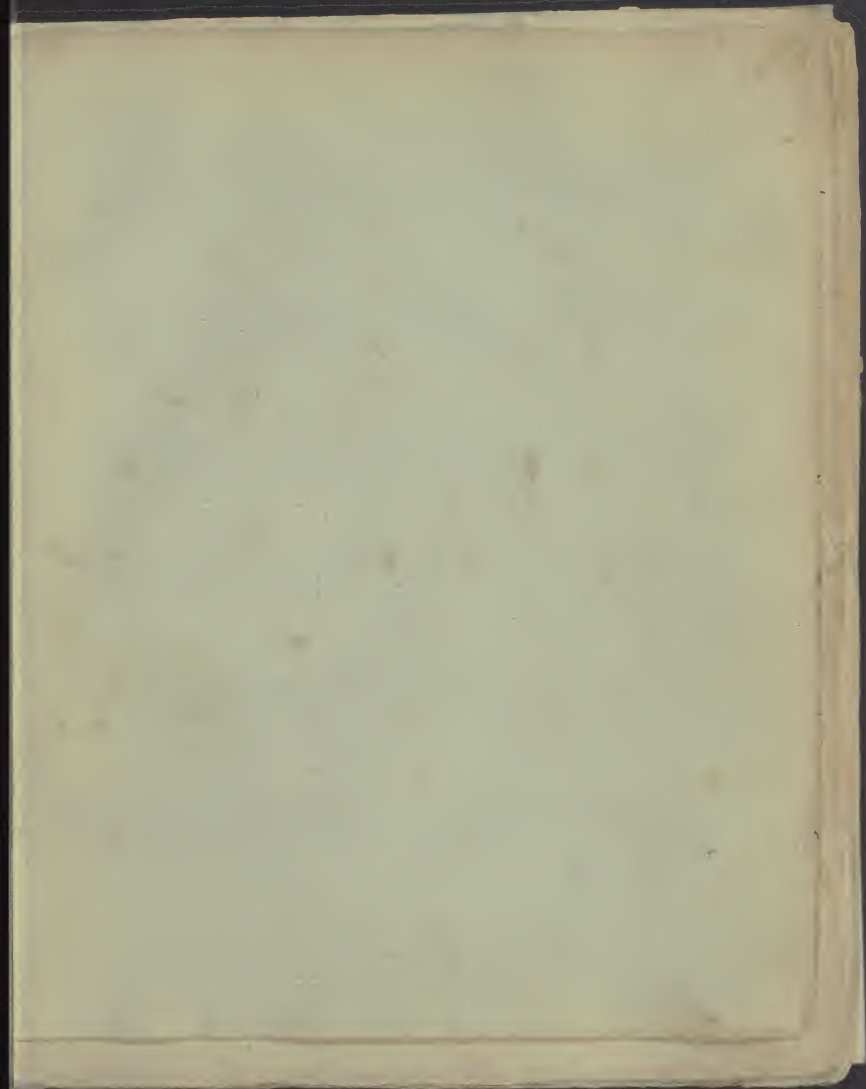
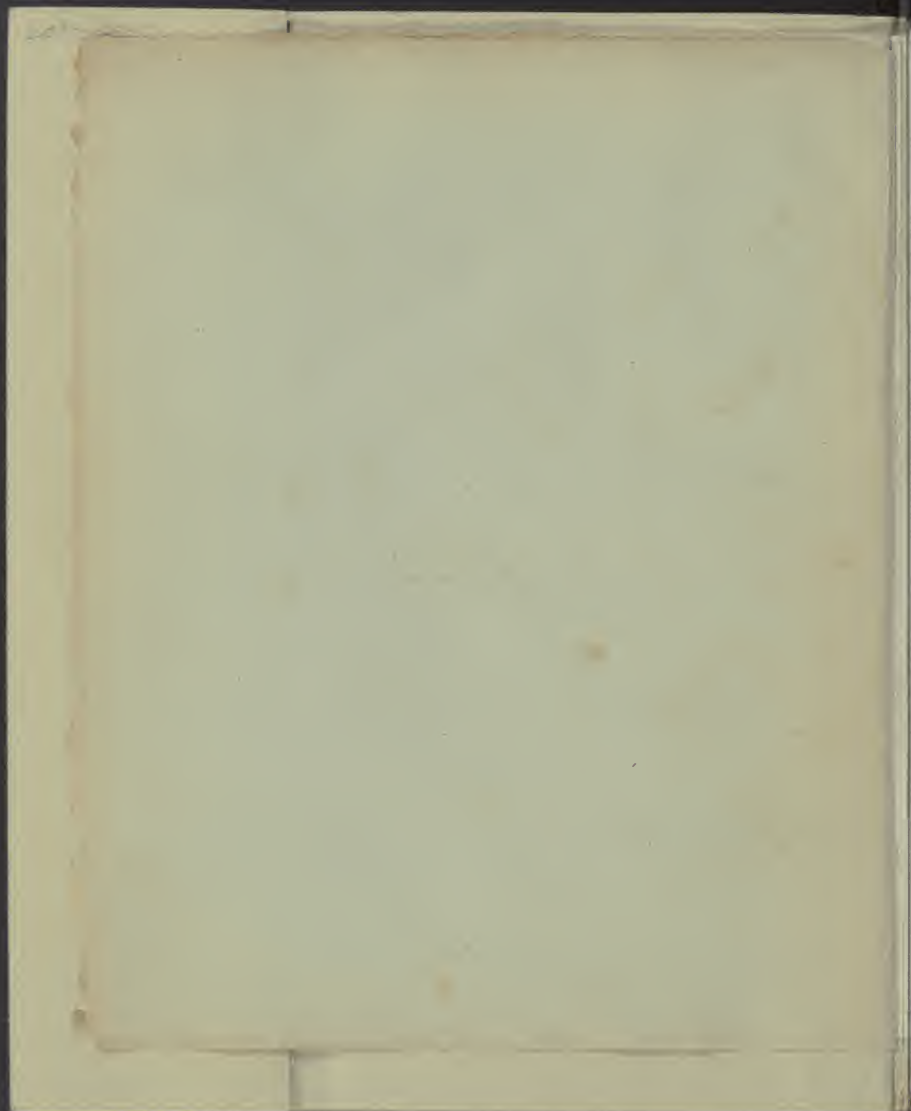


I

No man was ever great in
any department of intellectual exertion,
whose soul had not, in some way
or other, been tempered in the fiery
furnace of adversity.







20
Judge Adams is not the man said he did not
like to be employed with a very fine lawyer, nor with
a very good one. He had a very little of each and
one very good one.

Philosophy
Lecture 11, November 4th 1794
Law

Municipal Law is a Law of society com-
manding that which is right and prohib-
iting that which is wrong.

There are two divisions of Law the sta-
tute and common as the leges scriptae
& the leges non scriptae, all the other di-
visions of Law will fall within one of these.

By the civil Law is generally understood
of civilians, the Law which obtained
the Greeks & Romans. By the code of
Lew is meant that collection of

The statute Law we have all of these
Laws declared to be the Law of the
country. But the common

also more in force but in a more
and in a way than the statute
common Law is refined & improved

moral usage among the
of man runneth not to the contrary
of this is meant, not any particular
no rules have prevailed, but those
ages which have been considered

2

as Law, adopted and sanctioned by the courts of justice. The evidence of what this common Law is is to be found in the adjudications of those courts in the reporters.

We frequently see courts declaring a set of precedents not to be Law, ~~by~~ this we are to understand that they are not founded on principle. There are certain maxims agreed on and held to be the principles on which the common Law is founded to which all the decisions of courts should conform. When there are any set of precedents are opposed to these maxims, the courts must declare them

to be Law. These maxims are the standards to be resorted to in all cases to determine whether a set of precedents are Law, and ought to be admitted as such. In all ^{instances} where a case come up, the court must resort to these maxims and form a precedent. That where no direct precedent is to be found and the case is entirely new, the court must ground

their decision upon a natural equity, upon
 the Law of nature & reason. A court
 of ~~Law~~ ^{Equity} is not bound down by prece-
 dent or the adjudications of former
 courts, but the courts may at any time
 resort to principle. But great regard
 is to be paid to precedents, for two
 reasons because they are the evidence
 of what the common Law is handed
 down to us by wise men, and because
 the people have been taught to an-
 ticipate these precedents as Law, and
 there should be as little instability as
 possible in the Laws as what the
 people suppose to be Law.

Of the Definition of common Law in
 memorial usage whereof the
 if men runneth into the canon
 If this is admitted and applied
 allows that we can have no
 of our own in this case
 be bound down by the English precedents
 entirely and indeed to the common
 Law as it stood before the time of
 River &c. The reason offered why we can't
 have a common Law of our own and
 whose when the Eng. is not the cause
 as it settled within the time of
 But this is absurd for great

part of the Eng common Law has
grown up within the time of legal
memory the action of ~~assumpsit~~ &c

But we find that our courts have in
many instances varied from what has been
considered the com. Law in Eng. I leave
from the English precedents. So that
our courts have made laws which re-
gulate our property. But his laid
down as a maxim that no court can
make Law. tis true they cannot make
the law upon which the Law is founded
But the fact is the common law rules
are founded in the adjudications of courts
and the rule never existed until a
precedent was formed

Lecture 2nd Nov 2th 94

o. Lec mercatoria

The Law merchant is a law regula-
ing and applicable to a certain class of
transactions principally of the mercan-
tile nature. This is a very extensive
law which reveals throughout the
whole commercial world subject to

very little variation in the different
 commercial States. Local customs do
 in some States obtain, which are va-
 riant from the general Law. What
 the common Law is in England, the
 Law merchant is to all commercial
 States.

The civil Law, as such, has not been
 the force in England and it has be-
 come so by being adopted by their
 courts. the same observation will ap-
 ply to the common Law of Eng. when
 it is enquired of what force that Law
 is in the United States. Blackstone says
 that an act of the force of the Law
 in Eng. will have the force of
 the common Law here; that it has
 not the binding force. But he
 says the Law of Eng. is not by
 being adopted by our courts.

The maritime and ecclesiastical
 Courts have adopted and are
 governed by the civil Law.

16

If what authority there is to the contrary
 in our Law of England in this country
 chiefly speaking of none more
 than that of Japan: but very many
 of its rules and maxims have
 been adopted by our courts and by
 such a adoption we come further.
 We have always been accustomed
 to refer to the Law of the
 land and our courts have usually a
 adopted it upon novel questions.
 It is *prima facie* evidence of what
 is right. but our courts are at li-
 berty to examine and reject it.

It is of as great necessity and im-
 portance that we be acquainted with
 the English Law as that
 an English Lawyer should be in or-
 der to know what has been ^{decided} there
 in this country, what has been rejected
 and what ought to be rejected.

There are certain instances in which
 our courts are not at liberty to reject

from the Eng. law as where our legislature makes a statute referring to the Eng. law as declaring murder a capital crime, we must resort to the Eng. law to learn what murder is.

The Eng. statutes have never been considered of any binding force in this country except those made before the latter part of the reign of Henry 8. which had the same force as the common law, the subsequent statutes are of no force independent of the common law. The new legislature have adopted our own statutes which has provided a new system of laws, we adopt the construction with the statute.

Lecture 3rd Nov. 6th 1794

Statutes are either general or special
General statutes act upon a certain
and the commonwealth large
and operate upon the entire subject
where upon they are concerned.

Special or private statutes act upon

made of the evidence & for rules, individuals and affect them only. If any person wishes to take advantage of a special statute he must, plead specially, or it will be of no advantage to him. A judge will not notice it. But general statutes need not be plead specially except in one case where the D^f means to avail himself of the statute to avoid his contract, as where a man means to avoid a contract on account of usury he must, plead the statute specially. In connection with statutes need be plead specially, for by statute, these special statutes may be given in evidence under the general issue, but they always are plead specially, and if not they will not be used at the trial a day will not be needed in the trial. See the Digest of Statutes, 2 Black. 38 Co Lit 98 & Gilbert's Law, and it is under the ~~statute~~

Statutes

9

It is a maxim that statutes made
against natural justice are void.
This is a bad maxim, it places the judi-
ciary above the Legislature and ad-
mitted in its full sense enables them
to reject whatever statutes they please.
This power no court ought to have. If a
Law is made which in the ^{opinion} of a court
is unrighteous, and which in good con-
science they cannot execute, they may
refuse their seats, and the people must
soon under the pressure until
a reformed Legislature shall repeal
the statute. If a statute is not by
the Legislature, derogatory to the
established constitution, the ju-
diciary need not carry it into ex-
ecution but may declare it void.
See the Eng. case upon this subject, *Holt* 8,
8 *Baker* 107. *Black* 40. *See* also
In case the statutes are to be
kept from the first of the session of
Parliament *Holt* 111-303. *Black* 40. 112

16.

In this state the statutes don't
have the effect of all the time for
publication. But it is not determined
what amounts to a publication. Some
have said that when the members of
the Legislature have returned and
had time to inform their consti-
tuents, that they ^{statutes} shall be consid-
ered as published. But the real
question is this, which is, that
the greater part of the members
know little of the statutes passed, and
are incapable of informing their
constituents. Printing of the laws
in public papers is a qualification
and from that time they are
effectual.

It is said that the Legislature must
make an explicit provision. But
say so. It shall be it shall be,
that's not it.

of Penal & remedial statutes. They
are to be construed strictly and
not to the letter. But laws that
are made by being approved
by the people will be in force.

paper can say to the spirit of the stat.
then in such case the statute shall be con-
strued liberally, to clear the innocent
person. As the case of the physician who
was hanged in the streets of Bologna, which
was by Law a capital crime in this
case in Beccaria. Præmedial statutes
are to be construed liberally accord-
ing to the spirit of them.

Statutes are in some instances re-
pealed by subsequent statutes, which is not
a sign of punishment here other have a retro-
spective view and punish a past an action
committed in the malum in se with the
intent of punishment. The true name is a
statute before the act's statute. But
I have always a rule in one of a
positive malum in se and malum in se ha-
ve a retro-spective view.

Lecture 4th Novr 1744

Statute made in some cases
shall be construed liberally, so as to be
in a person who come within the
all of the statute. They may be in a
law to the general, the particular and the exception

Statutes are frequently made where
 a remedy was before given to complainants
 as in the case of perjury which was a
 crime and punishable to complainant
 the legislature have taken this subject
 up and inflicted a greater penalty
 than that to complainant. If there are
 in these cases no negative to us
 in the statute taking away the com-
 mon law remedy, the latter remains in full
 force, and may be proceeded upon
 as if no statute had been made.
 But where an affirmative statute
 is made more mild than the com-
 mon law, and which inflicts a less
 penalty, the common law reme-
 dy cannot be pursued. (Common Law)
 If a statute creates a duty, and
 prescribes the manner of enforce-
 ing it, no common law remedy
 can be applicable to it, but the
 manner prescribed by statute
 must be pursued. But if a statute
 is made creating a duty, and the
 method of carrying it into execution is

Statutes

23

is not prescribed, the common Law will lend its aid to enforce such a Statute.

Where the common Law gives a remedy, and a Statute is made to the same effect, without any negative terms, & then a subsequent Statute is made that will all stand together, and the Offender may be prosecuted upon either of the Statutes, or the common Law.

But if there is no common Law, and a Statute is made, and then a subsequent Statute in affirmative terms, this is a repeal of the 1st Statute.

Plowd 206 1160 61 Hobt 298. 12th
Hart 18.

If a Statute is made either for this thing or commanding a certain thing without expressly giving an action or naming the penalty yet in action may be brought by the party aggrieved founded on the Statute, and in such case the Offender is liable in damages to the party aggrieved and may be pro-

A

Statute,

executed by a man, Jan. 15, 1864
court of Law. But if a penalty is
incurred to the statute and given up to
the party accused, the offender is not
liable to a prosecution for a contempt
of the Law. When the penalty in the
statute is given, no one in partic-
ular is a question who shall have

1. If it is a crime which affects the whole community equally, or may in its nature affect them equally. The forfeiture is to the public in consequence of which a fence is built across the public highway. That if it is a crime which in its nature has a tendency to affect individuals only. The individual offender has the forfeiture as penalty, and is not liable to be harassed by the state of imitation.

if a statute give a right but point
out no regular process to secure
that right, the common Law steps
in, & the remedy

If a whole company of men to do
not is ha-uerent, not to do
is if a ha-uerent & to do a thing

escaped the same of entering into the con-
tract, but which a statute has afterwards
prohibited, the covenant is repealed by the
same and no action for the breach
will lie. If a man covenants not to
do a thing which then was unlawful
and an action comes and makes it
unlawful to do it, such act of the Legis-
lature does not repeal the cove-
nant. 1 Black 198. But if money has
been paid upon a covenant which
is afterwards made void by statute, in
which an inhibition is given, it is
to recover back the money paid.
Where a statute has been made explan-
atory of a former statute, it is to be con-
sidered as a confirmation & illustration 3 Rep. 131
Crozier 96. 2 Black 334

Where a right of recovery was vested in
some estate and a statute afterwards
made requiring other solemnities to
give a right, the intervening statute
does not affect the right of recovery as
where a contract is made requiring
the setting ass. But previous to the
execution of the contract a statute
intermeddles requiring other solemnities

to give validity to such contracts. The contract is not affected by the intervening statute 2 Lev. 27. Ventris 330. And yet a statute purporting out a new judiciary as ^{with new judges} former is operative. As in this state an appeal formerly lay from the common pleas in all cases of more than 10 L. But if a later statute it must be of more than 20 L. now if the cause of action arose before the new statute, and it is of more than 10 & less than 20 L. - in consequence it shall be subject to the common pleas according to the 1st statute.

Where a statute has received a construction, and after it was made in that construction followed for a long course of years, it is prima facie evidence of its being the true construction, yet subsequent courts may adopt a different construction, more conformable to the equity and spirit of the statute. ^{Where a subsequent statute} can repeal it.

Lecture 5th Nov 8th 1794.

Private relations. 1st Those of husband and wife. The right which a husband acquires over the wife's estate the marriage transfers all the personal effects of which the ^{wife} husband is possessed, to the husband, and he thereby acquires an absolute right of ownership over it. His cohesio is a ^{cohesion} such as her lands &c. he may make a partition and then they become his absolutely as in the ^{same} case, and the wife has no more right to them than to any of his other estate. Where the husband dies the wife's land she must be joined in the action if he dies voiding the action as and since he joins the money is collected it goes to the wife as her cohesio action but if the wife dies it is not so, as her cohesio as ^{cohesion} this cohesio action is not are not assumed to partition, but another principle of Law here that

in and gives it to the husband, ~~which~~
 which principle is, that where there are
 joint partners in an action, the death
 of one does not stop the suit or bill the
 judgment, but it survives in the
 name of the surviving partner.

But even according to this principle
 the husband ought not to have the
 avails of the action, for where one
 of the joint partners in the suit dies
 the surviving partner is bound to ad-
 ministrer a distribute to the heirs
 of the deceased his just portion of
 the avails of the suit, as well the de-
 ceased was entitled to at his death.

Now the wife dying, pending the suit
 or even after judgment, but before
 the money is collected, her heirs are
 entitled to the whole, for it is but a debt
 in action. This has not been de-
 cided by our courts, and therefore I think
 it may be a question that will make
 a figure. On a point made in the
 reign of Charles the husband has a right
 to all the wife's goods in action at her
 death, but with us that goes to the heirs of wife.

^{husband}
in this small subject will be related in a note in last page 1950
By marriage the husband acquires a
right to the wife's chattels real, as a term
for years in right of the wife. If these he
may dispose of at his election. but if he
does not dispose of them during his
lifetime they survive to the wife.
Therefore he cannot devise the m
in this instance it resembles a chose in
action. But if the wife die, her chat
tels real do not go to her heir, as choses
in action not reduced do, but it goes
to the husband as joint tenant upon
the principle of the jus accrescendi.

This is the English law; but with us the
jus accrescendi is not admitted, therefo
re when the wife death, her term
should go to her heir.

The right the husband acquires over the
real estate of his wife. By the marriage
he is entitled to the usufruct of the wife's
land, and to this he has sole and exclu
sive right during coverture. Upon
his death the wife again takes the land
and usufruct entire. Upon the death
of the wife, if the husband has had

By her issue Hamalius and Cohable
 if in his sitting, he acquire a life estate in the
 land, which is a courtesy of the law.

By the statute of 22 Hen 8, which perhaps
 may be considered as one of the ancient
 statutes, which with us has the force of com-
 mon law. The husband upon the death
 of the wife has a right to all her assets
 of real due before coverture, which
 is contrary to the general principle
 of choses in action not reduced to pos-
 session.

It is a common law principle that
 no conveyance of the wife's lands made
 by the husband and wife, is binding
 upon the wife. So if a lease is made
 between them she may beat it as void
 in his death. But by a statute of Hen
 8. a lease may be made which shall
 bind the wife, but this is subject to ma-
 ny modifications. A lease made by
 the husband of the wife's lands is al-
 ways binding during coverture.

As Reeve laid it down (page 17) that
 the wife must be joined in a suit of her
 land. But in one of Hodgkiss's notes on
 the act it is laid down that she need not be
 joined: see the note in the last 2 of 2

Lecture 6th Nov 11th 1794

The advantage the wife acquires in Joint of Property by her marriage

Authorities to the principles laid down in the last Lecture Co Lit 3, r. 351

300 a - 1600 12. a 345. 343. 851

Plowd 263-418 Cro Eliz 287. Ash 5

10 Mod. 179 3. Mod 189-186 11d 337

3. All 526. 1 Wils 168.

The interest the wife acquires in the real estate of her husband. In England she has the right of Dower, which is ^{the use during her life of} one third of the real estate of which the husband has seized during coverture. If he has aliened it or disposed of it in any way she is immaterial she shall have her Dower. Our Law is different for the wife shall be endowed of only one third of the real estate of which the husband dies seized. The husband cannot by devise or any other means deprive her of this third of the estate. If insolvent it is no matter the wife shall still be endowed.

22 The Land Wife

any conveyance of land that the husband may make to provide for his family, if made in contemplation of death and without a valuable consideration, shall be considered as a testamentary devise and shall nevertheless the wife & her heirs. If the conveyance is made with intent to prevent the wife from being enclosed, it may be considered as a fraudulent transaction & void, as the wife may in such case be considered a creditor.

The Personal estate is upon a very different footing, than the husband may divide away from her, and is then to be divided. But the wife is entitled to one third of the Personal estate after the debts are paid, and in case there are no children to one half. This is hers absolutely, and not merely the use as in real property.

The wife of ^{an} American native. By this is
meant her waiting apparel, &c. jewels &c

Such of the wife's paraphernalia as is necessary for her, such as decent apparel according to her husband's rank & bedding, he takes, her upon her husband's death and can neither be devised from her nor taken for debt. As to the rest of the wife's paraphernalia, her jewels and other ornaments of her person, together with her costly apparel, these are liable for debts in the hands of the Executor, but not until the whole fund of her personal property in his hands is exhausted. This part of the wife's paraphernalia can not be devised by the husband, yet in his life time he might have disposed of them. If he has pledged them the wife may at any time after his death redeem them.

If the personal estate & paraphernalia is exhausted in the payment of debts and this was done in whole or part by specialty creditors, Chancery will set in the wife upon the real estate in the hands of the heir, to the extent that the personal estate was charged.

24 Husband & wife

by specially credited authorities as they
respect paraphernalia and separate
Roll 911. 2. Hk 104-77 3. Hk 430
217-348-393-369. Bro Cha 346 is
a contrary authority.

A feme covert may have personal
& real property separate from her husband
and not subject to his control
But this must be expressly given to
her sole and separate use, it then vests
solely in the wife and she is competent
to exercise all the powers over it that
a feme sole is, and her husband
A gift to the wife from her husband
during coverture has been considered
as a gift to her sole and separate
use

Lecture 7th Nov 18th 1794
Of Feme covert's contract. How far bind-
ing upon herself. this is a novel doctrine
established by the courts in England. But
which has not yet been before our courts
On the extent it is designed to be carried
the older lawyers are generally opposed to it
particularly Pearce

This is a general rule that the wife is not bound by her contracts. The reason assigned is that she has no will, she cannot therefore agree or disagree to anything; as if by her contract there is the semblance of an agreement, yet she is supposed to be under the coercion of her husband. The agent not free & therefore not binding. But this is not the true reason why she is not bound by her contracts. The true ground is, that since the law has taken from her the means of discharging her contracts, by putting all her property into her husband's hands, in mercy therefore the law prevents her from contracting so as to bind herself again. the wife is under no necessity of making such a transfer, and it, and it is of no ~~necessity~~ advantage to her, for her contracts far more bind her husband. & the reason is still the

26

Husband & Wife

wife was admitted to land & to enjoy
her contract the husband might be
deprived of her earnings, & thus
his heady being taken in execution.
These marital rights of the husband;
the Law has taken great pains to pre-
serve, and prevent their being infringed.
It is admitted on all hands that there are
exceptions to the general rule just laid
down, and that there are cases in which
the wife's contracts are binding.

1st Where the husband has assigned the
real estate, &c. 135. 332 and 4th Mon 124. 12th and 14th
2nd Where he has been banished. 124. 116

The reason assigned in the last case,
these exceptions, is, that the husband
is civiliter mortuus, and she is con-
sidered as a widow. But this is not true
she is not entitled to dower, nor has any
of the rights of a widow, and in no sense
is she treated as a widow. She is still a wife
and that moral incapacity the ground
upon which those who are subject to the
modern maxims must be still in-
famous, and will while she is a wife

But proceeding upon the true grounds the reason is clear why the exception is made, and her contracts binding, or 1st ~~one~~ of the principle reasons why she cannot in ordinary cases contract an end. In the true cases put, there is a necessity for the wife to bind herself for her support or she might starve, for binding her husband would not answer a creditor. Besides the husband's marital rights can not be affected, when he is thus out of the realm.

3rd case. A wife divorced a merse as there, her contracts are binding upon her, and why? not that the moral incapacity imputed to her is removed by this act, but the true reason is it becomes now necessary for her to contract, and the husband's marital rights cannot be affected, he can not be more effectually deprived of her on being a sejourner than he is by the divorce.

4th where the wife is not divorced, but the husband is transported. the same reason as above.

5th where by articles of agreement, the husband & wife have separated, and the reason

separate maintenance allowed her.

Lady Ringheads case, where the husband lived in Ireland and the wife in England. Lord Mansfield in giving his opinion upon this case, mentioned the particular circumstances of the husband living in Ireland, which would tend to count this case with the two first put, but that was not the reason an Irish the exception to the general rule was founded, as appears from the case of Barnell & Brooks

which was the same case only the husband was in Eng. the principle it was said was, that the husband was not liable, not the true reason. I Durn Baron Belmont & c. of there said he said if the husband put the wife having a separate maintenance allowed her, the husband can not be charged therefore the wife must see Paulson we do this as did she has a separate maintenance and in consideration of that

is charged, but she can't on this ground
be charge^d no farther than to be the ex
tent of the ~~entire~~ maintenance.
these last decisions, have made much
contention among the Lawyers and Ju
dges, they are not Law that is not jus
tified in principle. Is true he has given
an unsatisfactory answer to the claim
upon which the husband ground their
claim ~~upon~~. Yet there is another
idea to come in here, is it more
that right if the husband can marry
if the case not be affected by the
ingrained usages and customs, for by the
articles of marriage he has ~~renounced~~
renounced all right to her person
to ruin & ruin ~~is~~ suppose then
a free separation without any main
tenance, could the wife be denied
her share in the property that she could
for the reason first given above
could not on a similar case, but in
this case and the law of
in the last case but this has been
would all determine in a similar case

30 Brown & Co. v. Coles 378 1 Brown Cha Cases 16
 a notable case 1841 in H.H.

Lecture 8th Nov 13th 1791

The husband's liability for his wife's contracts entered into during coverture.

The husband is never liable for his wife's contracts any more than for those of an indifferent person, unless he has in some way given his assent to them with or without compulsion. This is laid down in all the books on the subject.

Evidence of this assent. Where the husband has given a proper assent there wants no further evidence. and in those cases he is liable for his contracts.

2 Where the husband has incurred the benefit of the contract as where the articles purchased are for the use of his wife & children, they are said to be for his use, and thus benefit him in the evidence of his assent to the contract for the articles. See in 121. 126

3 Where the husband has always permitted his wife to contract, and it is a common thing in law. For never this use he can be considered as a partner employed in his business.

Husband & Wife

and he is contented to have her as
 agent, as much as a merchant does the
 interests of his clerk. But, it is a matter
 of fact, which the wife has not been
 allowed to contract, as for an
 land &c he shall not be considered,
 as being given his agent, and shall not be
 bound by his contract. 12th 118

If it is a subject of mother's consent, which
 the wife has not been empowered to con-
 tract, yet if it is a contract to supply
 the wife with necessaries for a family
 support in the husband's absence, and
 all things of this nature, no particular
 consent of the husband by the contract.

Roll 351. 7th 118. 12th 127
 All the cases yet met, all necessarily con-
 sist within the rule and design. That
 the husband's consent is always necessary, &
 not him for his wife's contract. But in the
 following cases, it is more difficult to con-
 sider. 12th 118. The husband has
 turned his wife out of doors, and she has
 contracted for necessaries, &c. in such
 cases, Roll 118.

Again if he turns her off and prohi-
 bits her from contracting for necessaries, &c.

and she immediately passes her
contracts with those persons for necessities.
The husband is bound on this case, for
the Law will imply his assent. The treat-
ment then and this constitution must be
construed as evidence of his assent
to § 1214. But this assent is not the
true ground, so far as he is bound
for his contracts. But the reason is he
is bound to maintain his wife, and
is therefore bound, by all his contracts for
necessaries. We receive then to all the cases
where the husband is bound for his wife's
contracts will fall within the rule, as that
where the wife is considered as an agent to
act in business for her husband, as where
she has been accustomed to contract.
If the wife departs from her husband and
she returns and he will not take her
again. He is bound by her contracts for
necessaries after the refusal, for he is bound
to maintain her.

Cases where he is not bound, for the wife's
contracts. If he lives in his family and is
supported by him then can he not be said
to be bound to contract, & if he is not bound, he is
not bound for her contracts after such refusal.

yet he is bound to support her, and if he does
 not, provide the maintenance for her
 rice, and he is bound by her contract though
 she lives with him 1 Leon. 5

If she elopes without any cause he is not
 bound for her contracts tho the case seems
 had no notice of seduction. 114. 706

If by articles of separation the wife has
 a settled maintenance she is not bound for
 her contracts. 114. 116

And there ~~was~~ ^{is} no separate maintenance
 by articles of agreement they live so that
 the husband is not bound for her contracts,
 unless she is able to support herself and
 if persons become concerned in such a
 case before they are separated by furnishing her a
 support. he is then chargeable for her
 necessities from the case ~~of the wife~~ ^{of the husband}
 I have seen of opinion on that the
 husband is not bound for her contracts
 and so long as he is
 bound for her necessities by some
 of the wife's contracts. But he is bound
 to maintain his wife, and if he
 does not do so his wife's contracts
 are liable, unless he has good reason
 to justify his neglect towards her.

Husband & Wife

When the valuable present was accepted
in full, he ought to be compensated with
some gratings & if he permitted us to
take a portion

Of the husband's liability for the wife's contracts
a far easier rule. He is liable for all
her debts provided they are incurred
during cohabitation, but if they are not
the wife alone is liable. He is
liable in all cases that the husband, even
if he has no means of supporting himself
or his dependants, is taken in care
of the husband's estate, the debt is paid
out of the wife. If the wife dies, her
husband is not liable, but he, if he is
in the hands of her executor is liable.

As his liability for her torts. He is liable
with her for all torts committed before
coverture, after marriage he is liable
with her for all torts committed in
her absence. In both of these cases the wife
must be joined in the action. But for
the torts she committed in company with
her husband she is not liable, and is
not to be joined in the action with the
husband, for she is supposed to have
done the act by his coercion.

Husband and Wife.

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Of the wife's privileges. For example the wife comes of a small European nation but she is committed in company with her husband (i.e.) if the husband is convicted of a crime of an indictable nature, she is liable whether committed with or without the husband.

There is no crime in the wife to protect her husband who has been guilty of a felony. In a civil action she cannot be sued and imprisoned alone without her husband. If sued and imprisoned with him & he breaks jail she must be released. To this last rule there is one exception if the feme has been seen before a justice, she shall not be liable to imprisonment without the husband.

Lecture 9th Nov 14th 1741
 Powers of the feme covert to convey her property. She may exercise a power over all her property which the husband is not permitted to do. He has a right to the usufruct, and she can

not convey a property so as to bind
the issue of the right. In England the
conveyance is not good by a fine
under this conveyance valid we must
examine it privately to know if he does
it freely to make the conveyance valid
as to the husband must be joined with
but if he is not joined with ^{her} yet if he is
not joined to and avoid the conveyance, it
binds her and her heirs. Why is the husband
ever allowed to avoid the conveyance,
because his interest is concerned, for if the
estate can pass by the deed it must go
in ^{the} interest, which destroys his usufruct of
interest. For there is a maxim in the Eng. Law
that no freehold estate can be conveyed to
a person in ^{the} future, without an intermediate
estate created at the time; the reason
is all in the ^{words} and, which means a wife
cannot be an intermediate estate as well
to ground the freehold. But this ^{is} an
exception where the wife is mentioned, as can
be seen in real property, does not exist in
the state for by Stat. land may be conveyed
to a woman or being as to the intermediate

dependents of a person in being. So that with us the maxim is to an end, and the same reason does not exist, as in Eng. why a wife cannot sue her husband's will. This has not received a decision in this state, & the common mode of practice is by joining the husband in the deed. In Eng. the wife may convey by fine without the husband and if he does not object, it is a good conveyance against her & her heirs. See the case of *Teromstan & Collins*. 1st Blackstone of the wife's power to devise her property at common law. The law we find is that if a wife is ^{separated} from her husband, the only reasonable & proper way for her to dispose of her property is by deed. In *Stat. of Mills*, we find that she had power to devise it. Her power is properly the sole devise, and her choice in action, which if they were not required to appear by the husband during a marriage, is proved by the statute. Her portion which was formerly an *ad vitam* estate in the day of sales, she might convey. From time to time cases which have come down to us, it appears to have been the old & common law before the invasion for the wife to devise her land independent of her husband. But yet it is not so now. In *Stat. of Mills*, we find that she cannot convey her land without the husband's assent.

The question whether the wife can die if
 it properly has once been before our courts &
 decided by the superior court unenimally
 that she could not. This judgment was given
 by a majority of one in the ~~supreme~~ court
 on 1891. By our test. all persons may die their
 lands except idiots & and persons legally in-
 capacitated. The same court can not be con-
 sidered as legally incapacitated.

Authorities to the points in this Lecture
 Recuer Eng Law 14307 - 111-101 Hyl 73
 2 Hyl 190-75. 10 Brown Chan 10. 1 Hyl 33
 518. 3 Hyl 700. 10 Hyl 126 2 P Hyl 316
 82. 1 Hyl 211-212 Mass 340

Lecture 10th Nov 15th 1794

Of the wife's capacity to acquire property
 during coverture. She has no way to acquire
 personal. but whatever she acquires by legal
 means in any other way is immediately to the
 husband. except that property which is given
 to her for separate use. But real property
 which comes to her by descent settles her
 in dispute of the husband. But if she has
 a use, and husband it is in the name of the
 husband to devise, gift by will or agreement
 to the husband if he takes it in agreement
 is not in the name of the husband. But if it is
 in the name of the husband it is not in the name of the husband.

He is precisely in the same situation
 as a feme sole with regard to the con-
 veyance of any premises entrusted to her. It
 is the same as if she were a single woman for the husband to
 devise the property to his wife & she disposed
 of it as her own. Because this power she can exer-
 cise, and appoint whom she pleases to the
 property. The key is thus opportune
~~and~~ ^{and} she can devise a man her executor & it
 is sold under her, but under her husband
 and in her name. If the wife does not
 execute this power, the State will ex-
 ercise it as the law directs shall 329 shall 39
 The wife is not bound by any of her contracts
 entered into during cohabitation, either with
 or without her husband. In the case of
 a judgment by fine. The contracts she enters
 into are not void absolutely, but voidable
 she may either affirm or disaffirm them
 if cohabitation has ceased. The reason why this
 privilege is granted to her is because she may
 as well as the execution of her husband, and
 after death when she becomes perfectly
 free it shall be at her election to affirm or
 disaffirm any contract which she may have
 made under the execution.

Contract of the husband & wife ~~has~~ ^{have} effected
 between themselves ^{in the marriage} ~~has~~ ^{have} effected by marriage

[illegible]

In equity the Law in this respect is different. Any contract on land into an agreement in favour of the wife will be decreed, to be carried into execution. *Winnon 481. 2 Vent 343* If the husband and wife contract after marriage, this is in law a mere nullity. *Coke's 112* yet circumstantially, they may have effect by making a third person the channel. As if A wishes to convey to his wife B, a piece of land a deed given directly to her would be a nullity but it may be conveyed to C and he convey it to the wife and it is a good conveyance. In equity it was formerly the case that trustees were made use of, to execute any trust made to the wife. But there is now an authority in *Bunbrough* that a trustee given directly to the wife, is a good conveyance and will be carried into execution. This has not since been disputed. If the husband sues over the property of the wife. He could formerly by the old common law, lie in a little. But that may not now be done. And if the husband undertakes to abuse his wife in any manner, she may by a certain manner have him imprisoned.

his good behaviour & to keep the peace
 There is an authority a loose charge 418 where
 the husband was allowed to restrain the wife
 of his liberty. When there have been articles
 of separation, the husband of the wife is in no
 shape subject to the husband 1 Bur. 542

the power of the husband and wife to be witness
 for & against each other, the rule is that can
 never be witnesses for & against each other
 except in treason. If the husband should an
 swer that the wife be admitted as a witness
 against him, yet the court will not suff
 er it for the case may be lost by that
 answer, and the husband would be liable
 to reproach her and it would create
 estrangement in the family

there is one more, that both the husband
 and wife may sue against each other
 which is to bind over to keep the peace &
 for good behaviour. This is now pass
 ed, & is not most common for the wife
 she must apply to a magistrate with a
 written complaint signed by herself
 after for to keep the peace we must see
 in her complaint that she affid of
 life & to be sufficient, it is not
 enough to say that she is married
 to a man & that she is a wife

Lecture 11th Nov 18th 1794

Of the wife's right of action for wrong done
to her during coverture

1 If the wrongs to her ^{husband} be such, that her ^{husband} personal property can hardly be injured so that she can have a right of action for it itself put into the husband's hands by the marriage. Where any injury has been done to her real property, if it is done to the inheritance, to anything that will descend to her heir, she may have her action ^{husband} after coverture, if the harm ^{husband} not been joined in an action with her husband during his life for the same injury.

2 Where any injury has been done to her reputation of special damages are only recoverable. The right of action ^{husband} is not so much to her, as where a town or keeper's wife has been called a slut, by which they lose customers. In such cases her reputation has been affected by legal slander. The right of action survives to her.

3 Where injuries have been done to her person, an action for the most money due owing to her, with a fine for the expenses of the assizes &c. &c. for the loss of her services for the year & the husband and she cannot sue for them.

In what suits the husband and wife ought to
 join ~~in bringing an action~~
 The rule is. ~~In such actions as would in-
 volve to the wife if no suit had been brought
 here she must be joined.~~ In an action to
 recover her choses in action she must be
 joined, an account of the interest she has
 in the suit, for if the husband dies pending
 the suit the judgment survives to the wife
 all the examples will be found to quadrate
 with the rule here laid down. Roll 347
 Bro. Eliz 437 1 R. 25. As for trover & con-
 version of the feme, goods before mar-
 riage, she must be joined with her hus-
 band, for the right of action survives to
 her, & as an injury to the inheritance
 of the wife during coverture - for a battery
 to the wife either before or after coverture
 she must be joined. 2 R. 89 Bro. Jac 501
 238. Bro. Eliz 90 - for false imprisonment
 2 R. 119

There are cases in which it is immaterial
 whether he is joined or not. These are ca-
 ses where altho the right of action does not
 survive to the wife, and therefore the

Husband may sue alone as no right
 of the wife will thereby be affected, yet where
 she is the meritorious active cause of the
 suit, he may gain his wife, for the debt
 cannot thereby be injured, as in part
 for rent of the wifes lands, she may be join-
 ed 1 Roll 318. 1 Salk 273 Palmer 207

Where there has been coitus, before mar-
 riage, and the concubine after, if the former
~~grad~~ she may be joined 1 Kent 261

2 Lev 107. An assumption to the wife for
 her services, ~~pro fac~~ after coitus, she may
 be joined ~~pro fac~~ 77. 205 1 Salk 114

A bond given to the husband & wife
 during coitus, is a bond to the husband
 alone and is the same as if her name
 was not in the bond, for by this no right
 of action survives to the wife, she need
 not therefore be joined, but may be

Where the action is ^{she} ~~in~~ ^{for} ~~in~~ ^{from} a
 connection with the wife and where she has
 no interest, she must not be joined ~~pro fac~~ 10
 1 Salk 117. Carth 116 2

Those cases in which the wife must be

joined with the husband and left. i.e. in which
the suit must be brought against them both.
The rule is that if the action would survive
against the wife she must always be joined
and can be joined in no other case. As where
the feme committed a trespass before cover-
ture the action must be brought against
both. for the right of action would survive
against the wife. If she commits a trespass af-
ter coverture but without the knowledge of
her husband, she must be joined. But where
she commits ^{a trespass} ~~an action~~ in conspiracy with
her husband she shall not be joined for the
right of action does not survive against
her. 1 Roll 6 Co Lit 351 Palmer 343

Where feme is lesee for life and marries the
husband is not liable for any arrears of
rent unless sued during coverture, but for
all rent that accrues after the marriage
he is liable. tho not called upon during
the coverture for of these he has the im-
mediate advantage and shall there-
fore account ~~for~~ Roll 351

1. Lovings 25

Lecture 12th Nov 1894

Of marriage & common law before the Act of George 2^d at common law, a marriage was nothing more than a contract between the parties and a subsequent living together as man and wife. It is true the ecclesiastical courts assumed a power of solemnizing the parties to a public celebration of this marriage. Yet the validity of the marriage was never questioned, without this celebration, and it was held and so the common law as far as it was concerned incurred by living together. But after the ecclesiastical courts assumed the power of celebration it was held by their courts in contempt of the church if the parties would not have their marriage thus celebrated, but no temporal right was affected, except such as flowed through the channels of ecclesiastical courts. Where the marriage was only performed at common law, by contract & living together the husband might cohabit with the wife in action &c before a time passed. But he could not have a minister to attend his wife, as the ecclesiastical courts would have the power of

Divorce

et divorce a vin. nottimanic hafter aizes the
issue. for it relates to the time ~~the time~~
the marriage which was illegal. But if
no divorce takes place in the life time of the
parties, the issue are not hafterd, 1 Halh 191
In Partiment may divorce a vinculo not
timanic for subsequent causes to the ma-
riage, and it shall not hafter aize the issue

Lecture 13. Nov. 20th 1794

Divorces in Connecticut

The causes for which divorces are granted
in Connecticut are Adultery. seven years
absence unheard of and three years with-
ful absence without ^{and fraudulent contract} supporting any sup-
port to his family. As, the former cause alone
the superior court can grant divorce,
the seven years absence, is no new one
that is not made in Eng. for it goes upon
the presumption that the absent person
is dead, and a woman in this state may
marry again if the husband has thus been
absent. tho he has never had a bill of di-
vorcement from his absent one but if
he is married to be dead

the superior court must always have a
verdict in matrimonii, and with us the jury
 is never, but rarely, the ~~superior~~ general
 assembly in this state, and divorces for 5th
 or 11 causes, than those mentioned in our stat-
 ute as propter motum & reutiam and
 the divorce they grant is usually uainculo
matrimonii.

The parties being within the Levitical
 degrees is no cause of divorce, for the mar-
 riage is absolutely uaind ab initio.

Fraudulent contract, is mentioned in our stat-
 ute, as a cause of divorce. This has never
 received a construction by our courts, some
 have supposed the legislative meant by this
 imposture, some suppose present fraud,

But the Recue supposes that it may mean
 any deception by which the other party is in-
 duced to contract in matrimony as professions
 an statement when in fact there was
 none.

In case of a divorce in this state, if the wo-
 man is the innocent party, she is entitled
 to the name of the husband, as well as the
 children, and in case the divorce

may give the wife one third of the of
rate or any smaller portion.

We have a statute regulating the busi-
ness of marriage. see the statute. one
clause in the statute is that the parties
must be married by a clergyman or
magistrate, but it has been a question
whether the marriage would be valid
if performed by any other person than a
magistrate or minister. Mr. O'Connell is of
opinion that it would not. but the per-
son thus marrying the parties would be
subject to a penalty for break of the stat.
No one has ever questioned the validity of a
marriage that was ~~not~~ in every re-
spect conformable to the stat. Pub-
licizing is requisite by the statute, but a
marriage is ~~not~~ valid, if this re-
quirement is omitted. Is true that the cler-
gyman or magistrate marry a couple
without incurring any penalty under the
stat. yet the marriage is not

741. *Overland*

Lecture 14th Nov 21 1791

By the Engl. Law it is immaterial at what age the parties marry. But if married under the age of 12 in female and 14 in the male. when they arrive at this period they may nullify the marriage but it is good untill the disagreement. Sect 33 & 34. Marriage by a person aged and binding in Eng. & Wales & 88. 493

Parent & Child

First of minors, by which is meant persons within the age of 21 years. Before the age of 7 years no child can be punished for any ~~crime~~ ^{crime} committed, or committed, for he is not supposed to have sufficient discretion or knowledge of the law before this age. From 7 to 14 is a doubtful period and their liability depends upon the discretion of the jury. From 14 to 18 the presumption is in favour of the infant that he is not sufficient discretion to be guilty of a crime. From 18 to 21 the presumption is

Parent & Child infants 45
against the infant. but in either case
the presumption may be rebutted by other
testimony. but where this cannot be rebutted
the maxim malitia supplet aetatem
holds.

After the age of 14 infants are as liable
for their crimes & torts as adults. They are likewise of age for some
other purposes, as to contract marriage
and choose guardians. The female at 12
& male at 14.

With regard to infants making of wills
to dispose of personal property there seems
to be great uncertainty in the English law
but it is established with us in America
that at the age of 17 the infant may
dispose of personal property by deed.
Heirs are not liable for slander un-
till they are seventeen.

The contracts of minors - as a general
rule they are not bound by them but
in some cases they are. In case of a
fraudulent contract the minor may
avail himself of his minority, and there
by commit fraud with impunity. This
idea of infancy is granted to men as a
shield not as an offensive weapon.

56 infants

Minors under certain circumstances are bound ^{by} their contracts for necessaries. The articles termed necessaries are diet, lodging, washing, instruction, physic & necessary apparel. But it is not in all cases, and under all circumstances, that the infant is bound for. There is still to be his contract. For, must it stand, he never signs but an agreement for him at the time of purchasing them. If he is far from living with his parent or guardian, is under his actual government and that government is duly exercised, none of the infants contracts can bind him.

But if the infant is absent from his parent, and under no parent, and that government is not duly exercised, nor is the parent neglects to make suitable provision for him, then the infant may bind himself for necessaries, that are suitable and proper for him. A poor boy destitute of clothing shall not be bound by his contract, for apparel of an extravagant nature, entirely improper for his situation. The infants contract should be covered by a certain sum, he is not bound by the second, if it is, such a notice that, he

Infants

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consideration cannot be gone into
in a court. As in case the infant has no
value and gives a hand, here the consid-
eration may not be enquired into, and the
infant shall not be bound by the deed the
re-liable can be first contract. This
is a good reason, and otherwise money
would be liable to be overreached by persons
who might sell them more easily than at
a good price for families that would be a loss
the quantum of the consideration in question
could not be gone into. This security has
been deemed valid for the reason above, that
the consideration cannot be gone into. If
an infant in law give a promise, or be
bound in law, the consideration need
not come into. But suppose this note negoti-
able, and actually negotiated the consid-
eration may be gone into, and if so, the
infant not bound in law. An infant, in law,
is a single bill nothing general in law.
Hence in the confidence in a court
be enquired into to get a name
in an action at law. In fact 30
I think the law is in a more
state. In the state of the law

Infants

consideration of a promise note can
 not be gone into yet our courts can run
 to principle and if they suffer infants to be
 bound by them they cannot go to
 the substance of the consideration. Our
 courts have been led into this error, run
 following the Eng. courts, who admit the
 infant to be bound by their promise note
 but in England the consideration of the
 note may be gone into & not in this state
 therefore an infant ought not to be put
 so much into the power of the other as he
 is with us, by being bound by his necessities,
 where the particular article of real
 value ^{if the necessity} cannot be ensured into by the court
 our courts ought either to say that the
 promise note is void or admit the consideration
 to be gone into.

These contracts of infants will be void for
 necessity and in which they are not bound, they
 are void absolutely void but only voidable
 and the infant may affirm them when he
 come of age, as he may repudiate them very
 immediately when the article he has disposed
 of as if he is sold as a slave for full price he
 may sue the vendee in an action of trover and recover the price

Lecture 15th Nov 22nd 1794

We have mentioned that infants may re-
 scind all their contracts of Infancy na-
 ture. except for necessities, and that the
 infant who has by fair, honest contract
 parted with any article of his property
 and that he may reclaim, at his pleasure.
 The only question then is can he retain the
 money that he has been paid for, for the
 article which he reclaims together with
 the article. As if a minor sells an horse &
 receives the money for him, and after-
 wards claims his horse can he in this case retain
 the money? Upon principle we believe
 we should not. The privilege is only
 given to protect the infant from fraud &
 not to assist him in committing it. It would
 be perfectly just and equitable that if the
 minor should elect to rescind the contract
 the money should return to the original
 state. But the current authority is
 opposed to this idea. And the only reasons
 assigned for the infants being allowed to.

to retain the money when he has received
 as the money is these in fact that he
 shall be liable as a person in the adult
 as trading with the minor but certainly
 there is no crime and it was a man could
 hardly be culpable, for it is almost impos-
 sible to distinguish minors from adults.
 Another reason assigned is that the pre-
 sumption in such case is that the adult
 designed the money as a gift to the minor,
 this is really absurd.

But are difficultly safer. No action
 shall be brought against the minor to
 recover the money in this instance. The
 natural one to be brought against an in-
 fant in this case would be an assumpsit
 but this action is founded in contract
 and an infant is not liable for his con-
 tracts. But the fact is this action of assumpsit
 is not strictly speaking founded on a con-
 tract. The promise in all ages but in all ca-
 ses, the action will lie. There a man for law
 is bound to perform a duty. Where the nature of
 the action will admit of no other remedy
 besides there is no reason why an infant
 should not be liable in certain cases in an
 action of assumpsit. Where a minor has

possibly taken money from me in
the street. Now I may have an action of ^{trespass} ~~trespass~~
vi et contra personam, and ^{therefore} ~~therefore~~ as an why I should not
have an action of assumpsit & well as
this action against an assult against the
minor, I will not appear as well for the
same act. Supposing that the minor had
purchased a horse from me & I demand for
him and should afterwards demand
return back his money the action of ^{assault} ~~assault~~
vi et contra personam, there would
be the horse from the minor. But it is
uncertain whether my assult would support
an action of trespass against the minor
to recover back the property in this case
then.

As a minor who is doing business separate
from his guardian or parent, as if he is a
merchant or a trader, he is liable upon his contracts
for articles that are necessary for him to
carry on his business. In these cases it is
necessary that the law means an infant should
be bound by his contracts. 2 W. 49
W. 49 2 W. 49 2 W. 49
An infant is not bound by his contract
for money loaned to be laid out in necessary
expenses, unless he actually pays out the money.

for necessities, in law he would not be bound by his contract with Mr. Lender, but in Chancery he would be bound. As it is in the case of 1083 Talk 279. If the lender goes with the minor, and sees him lay out the money for the necessities, the infant is liable upon his contract, as the money the minor is not bound by an express or implied contract for a ~~certain~~ sum certain as where the minor purchases a coat and promises to pay ten pounds for it, & an action between adults this contract would be valid and judgment would be, in default for 10£. But between the infant & adult the 10£ is not the rule of damages, and this contract of the infant, if of no avail. In Eng. if the case is similar to the one stated, the declaration would contain two counts, one declaring upon the contract, the other an indebitatus assumpsit upon the quantum meruit, and the recovery is upon the last count. In the last count - In an action it is certainly the safer

way to bring the action of indebitatus of
sum trist, and recover quantum meruit. Then
to declare upon the contract.

If the infants debt for necessaries has been
raised by an adult, and to secure to the adult
the money thus layed out, the infant en-
ters into an obligation in a double sum

This obligation is void, tho if he had taken an
obligation for the very sum layd out it would
be a good obligation. Bro. Tilly 9 Q 0
The infant is chargeable for necessaries
in wife's charge 168

If a minor is not bound by an instrument
of realty. If this is a writing the con-
dition of which may be gone into, and
thus the rule laid down in the last lecture
seems to be contradicted. But the rule of law

that the instrument ^{innum} contract should not
bind the infant, was established at a time
when the items of their contract could not
be gone into. If the courts have said that
the items may be gone into, infants ought
therefore to be bound by this instrument, for
the reason why that was not so formerly bound
does not now exist. Duff 38 11 17

169 Palmer 228 Strange 938. 4 Burr 1746 the best
case an infancy. Burr 1717 What is just for the
infants as to the rule and the

As a general rule in contracts of infants
 it is to be considered as void but only
 voidable. but in some instances they are
 to be considered as void ab initio. Their
 contracts shall always be so understood
 as shall be left to protect their interest. Now
 when the infant is about to suffer by his or
 her act it shall be void, as if he sells land in
 the possession of another. if this is considered
 as a contract. The infant will be liable to
 the penalty of the statute against selling land
 in another's possession ~~for another~~. To save
 the infant from the penalty and the waste in
 the land, the law permits him to consider the
 contract as entirely void ab initio. So where
 a minor sells a horse, or a man who is
 to become a bankrupt, he may treat
 the contract as void and go to the market
 to buy and take away the horse. he is entitled
 to do so.

If here an adult contract with a minor to
 the advantage of the minor, he shall be bound
 by his contract. A person of full age can
 marry with a lady of 17 he may marry, he is bound
 by his engagement, but it is rather a pity
 that the law is not yet settled as to the opinion on this
 point in this case. in a case of opinion on this

If the infant has contracted a debt, and is
 fully recovered, the estate sold to the vendor
 with his own name, he can now, at
 the contract avoid ab initio so as to sub-
 ject the vendee to an action of debt, if
 tho' there has not been the material
 breach on the part of the vendee, as in the case
 of the infant, who is liable for the money
 paid in either case. *In re, The Bank of England*
 137. Delivery of goods on a contract to
 the infant, *129* 1 Dec 169
 Lecture 16th Nov 25th 1794

An infant sold the annuity of his rais, his
 wife & a daughter cut off, and his rais was much
 injured thereby. He was allowed to treat the
 contract as entirely void and brought an ac-
 tion of the price, for an account and delivery against
 the rais, who cut his rais.

An infant cannot release a name, and seal
 away, nor release except where the
 law has given him liberty 30th Oct 1794 208
 are infants liable for their frauds, impositions
 or criminalities? the decision of this question
 we should naturally suppose would depend
 on this, whether fraud was a tort or wrong.
 as infants are liable for their torts, and
 fraud is certainly a tort. But by law the
 fraud has been connected with the con-
 tract, for which he is not liable. & they

there are some suppose that he was not
 liable as they are connected with the con-
 tract. But this by no means follows, for the
 fraud and contract are entirely distinct. he is
 universally allowed that the infant is liable
 for his frauds *criminales* & in a contract
 and the same principle which makes him
 liable in a fraud *criminales* will make
 him so in a fraud *civiles*. But the cur-
 rent of authorities are against the infants
 liability for his fraud. 20258. Lev 109. But
 one of the judges suggests the infant is li-
 able for fraud in a *case* 12 *Mod* 203

In equity the rule is that the infant is li-
 able for his frauds, but is not laid down
 with precision to what extent he is liable

2 *Reason* 224 in the case in the 1 *Reason*
 the same point

is laid down that if an infant, 200th *Reasons*
 voluntarily which in equity he is bound to do
 he shall not be at liberty to nullify the contract.
Case 1794. as in making a partition of an
 office but if he makes an *indiscreet* for-
 titution so that he is voluntarily & yet he is like
 to become a loser and sustain an injury, he
 is not bound by his act. *Case* 1771. So an
 infant may be an executor. At 17 and discharged
 by his acts in the *business* but if he makes an
 indiscreet contract he is not bound by it

adults are bound by their contracts to infants, tho the infant is not bound to the adult
 See 41 & 46. 1 Mod 25. Vent 71 Strange 870
 937.

The infant may affirm his contracts by which he shall be bound when he comes of age, but it is a disputed point with lawyers: whether he is bound and the action is to be brought upon the promise after he becomes of age, or whether the action may be brought upon the original contract as when a parent has been given Cro. Lit 3. 2 Vent 203 Cro. Jac 320 Cro. Eliz 127.

The minor who has given a bond, may discharge herself of it to pay it and the release is valid.

If the minor covenants to settle particular estate upon her wife this covenant for settlement, in equity is to be considered void.

An infant is liable for his crimes, & if he has a privilege not allowed to adults. In all cases where the crime is of such a nature that corporal punishment may have the necessary and direct consequence as in treason, and in the crimes of murder & felony the infant is equally liable with an adult, to corporal punishment.

But where the offence is ^{punishment} attornal to the offence, the infant shall not be punished corporally, as where a forcible entry has been made into an others house, the adult may if guilty of the crime be punished by fine or corporal punishment, but the infant cannot be punished corporally.

The infant is not liable for his neglect or more than forfeiture be Lat 24th 25th

An infant in ventre sa mere, by the civil law and in equity they are considered as persons, in esse and may take profits. If a devise is made with words of inheritance to the child unborn it is good if to a person in futuro & see Lectures on wills

Infants are disabled from acting in a judicial capacity, nor can they be attorners, but many ministerial offices may be retained by them Plowd 374 9 Coke 48-57

Statute 242 456. 325

Of Infants. being well known there is no certain rule as to the age they are admitted at 14 generally and sometimes at 11 even younger than this they are admitted to tell for & against the party, the triers are 12 & 13 & 14 & 15 & 16 & 17 & 18 & 19 & 20 & 21 & 22 & 23 & 24 & 25 & 26 & 27 & 28 & 29 & 30 & 31 & 32 & 33 & 34 & 35 & 36 & 37 & 38 & 39 & 40 & 41 & 42 & 43 & 44 & 45 & 46 & 47 & 48 & 49 & 50 & 51 & 52 & 53 & 54 & 55 & 56 & 57 & 58 & 59 & 60 & 61 & 62 & 63 & 64 & 65 & 66 & 67 & 68 & 69 & 70 & 71 & 72 & 73 & 74 & 75 & 76 & 77 & 78 & 79 & 80 & 81 & 82 & 83 & 84 & 85 & 86 & 87 & 88 & 89 & 90 & 91 & 92 & 93 & 94 & 95 & 96 & 97 & 98 & 99 & 100

It is a general rule that infants shall not suffer for their negligence but the statute of limitation runs upon their claims unless they are particularly excepted. A person entering upon an infants estate may in equity be considered as a trustee to the infant, if the guardian elect to treat him as a loaner and not as a trespasser. It is a rule in Law that a trespasser who is seized of another's land his heir shall not be considered on by the rightful owner but the writ of ejectment may be brought against the heir, but where the infant has been thus wronged ^{deprived}, he may enter on his estate upon the heir to lit H. 2-3.

If an infant holds an estate with certain conditions annexed to it he is bound to perform those conditions or he will not hold the estate.

Lecture 17th Nov 26th 1794

Illegitimate children, and they are illegitimate children, are not common law children and are not born within H. 2-3 after

Задачи

and which has ceased by the death of the husband
 are bastard children may be bastards tho' born
 in wedlock the rule is here there has been
 improbability of access they are bastards &c. If the
 husband was alive when the children were born
 the presumption is that this was within the
 rule and the child should not be a bastard
 tho' the husband had been constantly in a
 jail in Northumberland and the wife an
 inmate in London. But these cases have
 been rejected, ^{as the rule is not} nor can they
 be evidence of what the law is, as they
 are directly opposed to the principle and which
 the law is founded as the former precedents
 are. If the improbability of access
 is shown, it is sufficient to bastardize
 the child. If the wife has lived in constant
 adultery with ~~the husband~~ another man for
 three years yet if the husband might by
 probability have had access the children born
 while she lives in this state of adultery are
 not bastards but belong to the husband
 when the improbability of the husband is demonstrable
 the child born of his wife is a bastard.
 If a man marries a woman pregnant by another

and England children may be bastards tho' born

in, and last the rule is. Here there has been

irreversibility of access they are basilar fr. by the

Regular was only there within the same area.

✓ is iflan. This was not this the

well as I the child should not be a hothead

that the mission I had been can thankly wa-

goal in earth & understand the wife as

Handle in London But there not to work

been erected, and

a evidence of shot thru

all sincerely opposed to the principle and which

The Law is laudable, as the former ~~proposition~~

president &c. & the simplicity of access

id

he knew. The wife has never in constant
adultery with the husband. I think

namely with the ~~signatures~~ and other man for

three years yet if the merchants might by hap-

activity have had access the children have

while the bees in this state of adultery are

not husband but belong to the husband

Then the imbeddability of the reduct is demonstrable

The child born of his wife is a bastard.

...the ... not tell a ...

The child is not a bastard

A bastard can inherit to no body not to his mother nor father nor they to him. The maxim upon which this is founded is that he is *filius nullius*. But he is the *filius populi* and therefore upon the same principle, ought to inherit to every body. But maxim that he is *filius nullius* is a' in alijust. There may be other reasons why the bastard should not inherit with a mans legitimate and even so this would be a none of contention in the family of legitimate children and wife, if the bastard was allowed to inherit with them. One reason cannot be inherited to, *exclusus* by his father not even by his mother, but this is not settled in this, that there has been a decision by our superiour court to a judge that the mother shall not inherit to the bastard. Bastards can take by purchase, but they are not in the same situation as others can, for a devise or grant to the eldest son and he will pass nothing to a bastard see *Leve* and *Leve*.

Of Bastard Eigne, & mulier puigne

Lecture 18th Decr 1794

When the wife is divorced a mensa & thoro and has a child that child is a bastard. But if the husband and wife agree to come together again, the children born after that are not bastards.

Where there has been articles of separation entered into between the husband and wife, and after the wife has children, it is said that the presumption is that they are the children of the husband but this presumption may be rebutted. But the presumption is not that the child belongs to the husband in such case, and he is the best man we should suspect. We have had no decision in this state upon this point.

1 Wil, 340. Is a case where we do not see the principle on which it is founded. The rule there laid down is that the wife once be admitted to prove the fact of adultery with her, but not to prove the husband had no access.

When the husband dies and the wife in a few months and in nine months has a child it will be difficult to determine

if the child is, the child may elect his father of the two *Palmer 10*

The english law has made no provision for the support of the mother of a bastard child nor to shift her in supporting the child. But she may swear the child upon some man, and the reputed father shall secure the public from the expence of maintaining the child. She may voluntarily swear the child before her children, but cannot be compelled to it. untill one month after her delivery.

Can the reputed father and mother each be compelled to contribute an equal share towards the maintenance of the child. So the reputed father must pay one half of the living in expence.

When the woman has sworn the child with which she is pregnant, the man an adulterer & a swearer is to be treated in every respect as a criminal, the process is to bring him forth with before a justice the binds him over to appear before the county court, where he has his trial and from the judgement of that court there is no appeal, for if considered as a criminal matter, from which there is never an appeal. The court if they find the man guilty

The judgment of the court is that the Deft. pay
certain sum and find security to indemnify
by the public against the maintainance of
the child, and he is to stand committed
until he complies with the judgment.
There appears from our statute to be a
discretionary authority, lodged with the
justice of the peace to bind over the
fellow to appear before the county court
or to release him, but when the justice
has refused to bind him over, he may
notwithstanding be arraigned immediately
before the county court.

Parents, grandparents, children and
grandchildren, are bound by statute, natu-
rally to support each other in poverty
so that if any of them become paupers
and the rest have independence, those who
have, must support those who are poor.
Grandparents shall not be liable for their
grandchildren's support, while the parents
are able to support them. If there are
a number of children all able to support
their poor parent, the court will com-
pel them to average the expence among

themselves according to their ability
 This is brought before the county court
 by a memorial, which is presented to them
 by any person indifferently. Sons in law
 are not obliged to support their wives, par-
 ents, see Kirbys reports, and the author
 cites there cited, By statute, if the wife's
 name is not sufficient to support her
 she shall be supported from the re-
 mainder of the husband's estate

Lecture 19th Decr And 1794
 where ~~the~~ a widow has children and mar-
 ries a man, the husband is not obliged to
 support her children if they are paupers
 at the time, he marries the widow, if they
 are not at that time, upon he is liable
 for their maintenance. See Burns Justice
 under the head of poor, and the author
 cites there cited. But the record of Juno.
 in this case has been that the husband
 to be the wife & her children and must sup-
 port them and is entitled to their services
 It seems reasonable that this should be
 the case, as the husband is entitled to the
 wife's services, and every thing whereby she
 might have ^{might have} supported her children. But the decision
 in this case has been contrary.

Parents & Children

79

The husband's liability to support his wife & children ceases with the coverture.

Parents are bound by the contracts of their children. This proceeds upon the principle of master & servant, ~~as to the~~ in one sense for the child is considered as a servant in the employment of his father, to transact his business, and so in part the contract is the contract of the father and the child only the channel by which the father makes the contract. This is one ground on which the parent is liable for the contracts of his ~~minors~~ children. ~~However~~ Many things will be admitted as evidence of the father employing the child, to make the contract, if the thing contracted for comes to the family's use - as if the father has been in the habit of discharging the child's contracts ~~therefore~~ evidences that the father employed the child in contract. So if the parent has emancipated the child, or considered him of age, and permitted him to make contracts, the father is bound by those contracts if the parent does. If pursuant to the child's request, and same other person at the child's request furnishes him, the father is liable for them and the child likewise. This is the common law. In this state we have a statute regulating this subject but it does not

Opinion that our statute is only an affirmation of the common law, as the common opinion of that is. But there are of a different opinion and think the child is under no contract even for necessaries, while under the government of his parent, but the government must be judicially exercised as he cannot with propriety be said to be under the government of his parent tho immediately with him. By our statute, where the parent gives the child liberty to make a contract, the child is not bound, but the parent, our statute requires that the Parents consent for the child to make a contract is necessary, But what shall be evidence of this consent on the part of the father? The same as of common Law

Liability of the parents for the torts of the child.

The parent is liable for the torts of a child to the same extent and in the same cases, as a master for the torts of his servant where the child is in the immediate service of his parent, and commits a tort the parent is liable. And where the child, in performing his fathers business makes use of different means from what the father expected, and by those means commits a tort

still the father is liable, he is liable
for the manner in which his servant
performs any service. For it is more
reasonable that the father or mother be an-
swerable for the unskillful or negligent
conduct of his servant than that another
should suffer by this means. But where the
child is doing something entirely of his
own free will, business and directions
the father is not liable for any torts he
may commit. The parent & Master are
not liable for the torts of their servant
in their employ, or actual service, where
the injury occasioned is purely accidental
and what no one could have foreseen.

As where the master desired to set fire to
some house when the wind was in such a
direction, that his neighbours could not
sustain any injury from the fire; the ser-
vant accordingly set fire the wind being
aided & communicated the fire to his
neighbours & soad the Superior court
in this case. ^{Liter v. Well} _{of} edged that in this case
no body was liable, neither the master
nor servant.

It is laid down in the books that the
Parents and children may justify an

82 Parent & Child

assault in favour of each other; But this proposition must be understood with some restrictions. Where the father finds his child fighting, and the child is upon the right side & justifiable in the resistance he is making, the father is justifiable in an assault in his sons favour, so far, where the father interferes and commits an assault in his sons favour, the father is liable for that assault, unless the son could be justified in the fight. But if the son finds his father engaged in a quarrel and his antagonist finds him down the son is justifiable in an assault in his fathers favour, tho his father was the aggressor.

Parents are bound to educate their children in the State.

Where a man injures by beating &c the child of anyone the father is entitled to his action to recover his damage for his loss of service Darts bill &c. but the son is entitled to his action for the smart money.

The Parent is entitled to an action so against a man for debauching his daughter and originally the only ground of this action was the loss of service but from the high damages that have of late been given it is evident that this is not the only or principal

grants: but in the connection between parent & child the injured feeling of the Parent &c is the rule of damages. 3 Wils 18. 2 Lumsd 166

If the daughter is 30 y. of age it is immaterial the father may have satisfaction as the mother if the father is dead.

Upon the same principle Mr. Chesebrough supposes that, if a house fellow had enticed away a mans son and corrupted his manners, wounded the parents feelings &c the parent would be allowed to recover much more than simply for the loss of service of his son.

Lecture 20th Decr Brod 1794

If Parents power to correct the child

He said reason in the hands of the parent may give the child reasonable correction. But what shall be accounted moderate correction is the question. It is true that the parent may correct to such a degree as to render himself liable to punishment, and the child may by his procheinamy have his action and recover damages of the parent. Master and schoolmaster standing in loco parentis, are in the strictest subject to the same law.

With regard to the degree of punishment to be inflicted, different persons will

have different opinions, and some may think that a particular punishment is moderate & proper, which others would think immoderate. Who then is to be the judge? The parent alone, who has the right of inflicting the punishment: for the parent as matter in this respect acts in a judicial capacity, and a parent thus acting is never liable for an error in judgment alone, is not predicable of the understanding, but of the heart alone. So that the parent as master acting conscientiously and from good motives are never liable in an action, for the correction of a child, let that correction be ever so excessive & disproportionate to the crime. They are only liable when the punishment is unreasonable, correction proceeds from malice & from corrupt motives. Evidence of this malice is correcting with an improper instrument &c. If then parents act from an improper motive yet the correction is but moderate they are not liable.

Of the settlement of the children See Burnet's
vol 3 page 186.

The place where the father has acquired a settlement is the settlement of his child &c.

in all cases where the children have not acquired a settlement for themselves independent of the father. So where the father has died and acquired a settlement in one town and married to another and there acquires a settlement, the last is the place of settlement for the children.

No foreigner can require a settlement in any particular town in this state by residence, but if he is a pauper he is to be supported by that state.

If the father has no settlement the settlement of the mother is the settlement of the child. If neither father nor mother have ^{any} settlement, then is the place of birth the settlement of the child. If the father having a settlement dies, and the mother requires a new settlement, this is the settlement of her children.

The child may acquire a settlement independent of his parents, and if he remains a year in a town and lives there a year, or an longer, settlement in a place by acquiring it in another. A child under the English law ~~may~~ acquire a settlement for himself if he is an apprentice, where he hath served his master forty days. But our courts have decided that the apprenticeship remains

86 Parents & Children Settlement of child
his master does not by any length of time
acquire a settlement. The ground on which
they founded their decision was that the
Apprentice could not be removed for the
want of the parties could not be broken
in a year. But the Recue thinks this is not
a true principle, and there are cases in
which it is not admitted, as where a child
has an estate in a town, he acquires a set-
tlement in that town by living there a year,
tho in this case he could not be removed
any more than the apprentice. So the
apprentice by serving his master in one
place for a year, ought to acquire a settlement
and so does any other person, capable of
acquiring a settlement by living in a place
a year. There is no circumstance that he
cannot be removed.

It is a received opinion in this state that
the wife by living a year in any place ^{with husband} ac-
quires a settlement. But by can I say she
does not by living any length of time with
a husband, and perhaps our courts in such
a case would be governed by the com. Law
and determine that she did not acquire a
settlement. Besides if the principle of
immovability is a just one and a bar
to a settlement, it must operate in this
case to bar the wife as well as an improp-
er, for the wife cannot be removed while
her husband lives.

Children of a former husband do not acquire the settlement of ~~the~~ a second husband & for their mother, by marriage requires no new settlement. The following case came before our court in New Haven county. A woman lived in New Haven where she had a settlement and a child by a second husband, she married in Derby where her child lived with her. Quest: did the child acquire a settlement in Derby? It was contended that the settlement of the second husband was not the settlement of the child

And that the mother by her marriage acquired no settlement. 3. that the child being under seven years could not be taken from the mother, consequently the child was irremovable, as the ~~parent~~ apprentice. But the court determined that the child acquired a settlement.

See the English Law. Burrows Settlement Case No. 2-15-14 pp. 118 15. & 1890

Guardian & Ward by Eng. Law Guardian in Jure is that is when a minor has an estate real or personal under the age of fourteen. The nearest of kin to the heir that can not inherit is guardian over his real estate may cease if & take care of the estate he is completely left in charge to give bonds to discharge his duties and to be on account a ~~ward~~ ^{ward}.

This guardianship extends to real property only and ceases when the minor arrives at the age of 14. Co Lit 88 At the age of 14 the minor elects his guardian, who is guardian over his whole property real & personal. There there are several persons equally near of kin, entitled to be guardians in succession, he who first gets possession of the ward is guardian.

Of Testamentary guardians. This is regulated by a statute which has no force in this country. It is however a practice in this state, for the father when he has made a will to appoint a guardian for his child, who is the testamentary guardian. In Eng he is the guardian untill ^{the} child is 21 years old, and is guardian of the person as well as real property. He is liable to the same control in chancery as guardians in sac. age. There is a case in the 3 of Mills that testamentary guardian cannot lease the minors land.

The parent whilst living is the guardian to his child, and is subject to the same rules as other guardians, and if he does not exercise his guardianship properly he may be displaced.

Lecture 21 Decr 1st 1794

Where the father is dead the court of probate in this state may appoint a guardian untill the child is 14 who then elects his guardian and the court appoint him when elected. But if the minor does not elect at 14 the court

guardian continues, & he must be the
 guardian of the daughters until 12 they then
 elect their guardians. A no guardian was ap-
 pointed the court of probate is considered as
 the guardian. If the father is the guardian
 he cannot take any of his sons estate or
 profits for their maintenance, for the fa-
 ther himself is bound to maintain them
 out of his own estate. If the father under-
 takes to give his children, who are his wards
 a superior education, can he take any
 part of their estate for this purpose? So
 this question there are contradictory au-
 thorities 2 Vent. ³⁵³ 353 & 3 Atk 399 Other
 guardians not being obliged to maintain the
 minors, may be allowed for their maintenance
 out of their estate.

If the wards estate is incumbered, and the
 guardian has money that belongs to the
 ward, he shall pay off the incumbrance
 2 Pym 279

The guardian sometimes purchases land for
 his ward, in his name and with his, the wards,
 money. but he cannot in this case compel the
 infant to take the land, for it is not his elec-
 tion, to take it as well for his money, if the
 child the latter, he must recover the land of the
 guardian

If the guardian employs his ward's property
in trade it is at the option of the ward to
take the neat profits of the trade or the in-
terest of the money & to pay 1024

guardians of every description may be com-
pelled to give security. 2 Mo 177. and where
his circumstances are sufficient they sometimes
decide that he shall account annually.

If a guardian commits waste upon his ward
they are not necessarily removed or displaced,
but may be. an injunction may issue a-
gainst him Hardres 96. Of chancery's power to
displace guardians see 1 RM 703-7. 2 RM 703-12. 13
Where chancery appoints a guardian, the ward must
have leave of the guardian as usual to marry
and travel, & carries such ward without such
leave is guilty of a contempt 3 RM 116
2 RM 157

all guardians must account with their
wards. all inevitable losses and reasonable
expenses are allowed the guardian in ac-
counting. the guardian may be compelled to ac-
count with the ward in the manner pre-
scribed in cases, as where the guardian is left
expending his office, or is displaced. if the mi-
nor sues his guardian it must be by bill or
chancery. In Eng. the common method is
to account in chancery, the sanction of

account lies at common Law, which is left to the common method in the state, tho a bill in chancery may be filed, but with little or no frequent practice is for the parties to account & settle before a court of probate and this settlement is can be reversed. It has never been the practice of the court of probate to admit the guardian to come before them to account, tho this seem to be the proper place for accounting.

The minor must always sue by his guardian or procheinemy. The minor must likewise be sued by his guardian, but where he has no guardian it does not abate the suit for the court may appoint a guardian pro hac vice.

A minor has been sued without his guardian and judgment is rendered against him it will be erroneous, it is reversible and the judgment may be reversed. In some judgments he has against a minor and adult, it is erroneous, as it is against both and may be reversed. In the first case it is good against the adult, and may be reversed by the ~~adult~~ ^{minor} only. (Purley 11-)

A man may be a guardian in his own wrong which is true a man ^{tho} it and conducts as a guardian. Co. l. 631. See Munkeough

Lecture 22nd Dec.

On slavery. Slavery is unjust and in consequence is illegal. It exists in this state but it exists as other crimes and vices do. We recollect we mentioned a number of arguments against slavery regarding the injustice of it.

Slavery exists in Connecticut. It is clearly a great scandal in violence and contrary to the laws of natural justice. There is no original common law authorizing slavery. It can therefore be defended in this state only by statute, and the decisions of our courts. Hence I am told we have no statute declaring any class of men to be property, and if the negroes are property, there is no right put them to any use to which they could put themselves, and they might kill & harrel them up. We have no statute in direct terms legalizing slavery. Where we have statutes regulating the state of slavery, but they only allude to the practice, as an existing evil in the state, and do not sanction it. So we have statutes against adultery and drunkenness, but it cannot be inferred that those crimes are sanctioned in the state.

Itt design, as in any other way than by his
 personal service. The master will be answer-
 able for abuse of his power &c. This idea will ex-
 tend a way for the manumission of slaves. It has
 been determined that the consent of the master
 for his slave to marry a free person is a com-
 plete emancipation of the slave. It has been
 admitted and established that when the pre-
 sumption of a negroes being a slave is
 destroyed, and at present the presumption is
 that a negro is a slave, the master in
 an action is put to the trial of his title
 which must of course amount to an imputation
 that if a master says he has a title to his
 slave, because that he purchased him of it.
 he must show that it title was well founded.
 This is necessary in all analogous cases, why
 not in this? This rule enforced will liberate
 every slave in Connecticut. The state of
 Massachusetts was under precisely the same
 circumstances, as Connecticut is at present, and
 by a decision of their court they abolished sla-
 very entirely. It has been said by some
 that the decision of that court was founded
 upon a rise in their constitution, but
 that court declared their constitution was con-
 sistent with the principles

Lectures

1797

apprentices, are persons bound to learn a trade they are generally minors. The master stands in loco parentis and may correct the apprentice as he thinks fit to bind an apprentice must always be in writing. But a man or even a woman servant may be hired by parol 6th Nov 1822 L.D. & 117 10th 68. Where a person is hired and no particular time specified, such general hiring in Eng is for a year. But in N.H. this is not the case in Connecticut

The master is entitled to the service of his apprentice, and all that he can acquire by this means is his master's. If the apprentice should run away, the master is entitled to all that the wages or earnings he can acquire, while absent. But this is not the case where a man hires a servant to act as his master, both in

Minors, can to a certain extent bind themselves apprentices. By the 11th of Eliz. the master, contract in this way, must give to the apprentice a right to his education and to correct him, while he lived with the master. But upon such a contract the apprentice is at any time at liberty to leave the master's service. The 20th of Eliz. 1532

1. Master & Servant

Lecture 2d. Feb 11th 94

the master may avail himself of the contract ^{made with} his servant for the benefit of the master, where the servant acted in capacity of an agent. For in such case the promise to the servant is a promise to the master. This rule applies in cases of parol contract but where, for the benefit of the master the servant was transacting business, and he had taken a security of a higher nature, this contract must be sued upon, in the name of the servant. In these peculiar cases, of contracts with persons not servants, entered into for the benefit of a third person, that third person may avail himself of the contract and sue upon it in his own name, see the case of *Dickson & Poch v. Smith*. Where the son promised the father to pay the daughter a certain portion. This was in the case of *Marshall v. Marshall*. But I cannot make an add, and the same principle has been adopted by the *Superior & County of York v. York & Haven*.

98 *Master & Servant*

The master is liable for the torts of his servant, when in his immediate charge, tho' the act itself might be contrary to the will of the master. 2 Lalk H.L. 1841

73 & 74

The sheriff is liable for the acts of his deputies, and where the deputy under his authority commits a tort or a crime, it is the immediate act of his office and with the approbation of the sheriff & the sheriff is liable. Similarly, where the Deputy entered a house to execute a process, and struck the wife of a man, the master is not liable for the tort of his under officers, see the case in the

Master is liable for the contracts of his servant. Where there has been the master's assent or implied he is bound by the contracts of his servant and in some cases where he cannot give notice of the master. As where a servant has been accustomed to take up goods upon the master's credit, it is

in view of assent and the servant leaves him and before it becomes a matter of notoriety he takes up farther goods upon the same credit. The master is liable if the articles came to the master, use it is conclusive evidence of his assent to the contract, and if the master has been in the habit of supplying his servants with goods, this is evidence of notice of sale, so that, with *Dampier* the servant explains credit, in account of the conduct of the master, to him shall the master be liable. *L. Rayd 241. Barton 487 Vent. 190.*

The master is liable civilly, for the fraud of his servant in his buying. *Stoke Newington, case. 2 Roll 693*

1 Carl 45. 3. Mod 223. One who bought a case is that of jewels sold to the King of Hungary *Brojac 469*. This is decidedly contrary to principle, as none of the last cases are cited. It is said the master was guilty of no fraud, neither

was not in any of the other cases.

There are cases in which both the servant & master are liable. The rule is if the master had no authority, for the thing done, the servant is liable, & doing the thing. But there are some cases, in part contrary to the principle. Where the servant sold corrupt wine in a tavern knowing it to be so, he was not liable. & the attorney for St. Louis where he lived, a life long. But these cases are not in Roll 95. 1st ed 290

Where the servant has done some injury in such a manner that the master is liable to a person injured by the servant, the servant is, in some cases, liable to the master. The rule is, where the servant has been guilty of negligence & infidelity in managing the master's business, as to the master, to the extent of the master's liability for the injury. Croft 267

Where the servant is any other person, an adulterer with perjury. *Shen Taniro furandi*, he

Master & Servant

101

was sent originally to common Law
guilty of felony. but a writ of Habeas & made
it felony. And the common Law is
of opinion that, that the bailor as
servant & being *quodammodo furandi*
is guilty of felony for the fraud & acts,
the contract, and the servant is liable
to all the punishment of the
Hawk. 92. Leach's cases. Of the matter
namely cannot see. *h* 175 2nd 167
262 20th 47 2nd 138

Lecture 25th Dec 11th 1794

Of the master's remedy as it respects his
servant, against others

1. The master is entitled to his action against
the person who ~~has~~ induced his servant
to leave his service. 2. Against him
who retains the servant knowing he
to be his servant. 3. Where the servant
has been bruised so that he cannot be

to Cohabitation, for his master an action per quod servitium lies for the master. When this action is brought by a father he may recover not only for loss of service, but for expence of physicians &c. may be master where he is bound to furnish the servant with physic, but not otherwise. For if the father or guardian of the servant child is to provide for him in sickness, he alone is entitled to this action for the expences of physicians. So that three actions may grow out of this battery of the servant. The master may have his per quod. The father for expences, and the servant himself for the smart money. Lalk 380 2 Lev. 63 90th 113 D. 97. Wherever the act of beating the servant amounts to a felony by killing the servant the master's action per quod is lost, it is said to be merged in the greater felony. This is the Eng. law. we have had no decisions in this country, but there can be no reason why the master should not have the action per quod.

The foundation of this rule in England was the forfeiture to the king, and if the individual should get his just demand against the felon, the king would be defrauded of part of his forfeiture. 2 Mol 568. 4elsgg

Of The Bailor & Bailee

The bailee is a person to whom the bailor has delivered his property under any circumstances to keep for him.

According to the books bailers are of six kinds, but they are all reducible to three
1 Bailor at all events. 2 Common Bailee
3 Naked Bailee.

The bailee at all events, is bound to answer to the owner of the property in every supposable case except the property is destroyed by the act of god, or which is the same thing inevitable accident, or the open enemies of the land.

2 The common Bailee is liable in case of the smallest negligence on his part

3 The naked bailee, is a person who, without reward takes property to keep, to oblige a friend



Bailees & Bailies

and is only liable in case of gross negligence.

The Sheriff is a bailie at all events, he is the principle gaoler, and in this lecture the words Sheriff and gaoler will be used indiscriminately. When a prisoner has once been committed, put within the walls of the goal; the Sheriff or gaoler is bailie at all events, and in case of escape, in every instance would be liable to the creditor except where the escape was effectuated by the open enemies of the laws or the act of God. As it respects the liability of the Sheriff it is perfectly immaterial whether the commitment was upon mesne process or execution.

Escapes are of two kinds, voluntary, on the part of the Sheriff, & negligent. Voluntary is where the Sheriff has given express liberty or permission to the prisoner to escape. An escape in any other case is a negligent escape.

The civil consequences of an escape, as it respects the Sheriff creditor & debtor. In case of a voluntary escape the Sheriff can never be liable and so the he debtor.

Bailor & Bailee

105

an action
2237, 20411

In case of a voluntary sale one the creditor
may have his remedy either against the
sheriff as the detitor. If the creditor elects
to sue the sheriff and recovers of him: the
sheriff can never sue the detitor and reim-
bursing himself. But he is utterly remediless.
Suppose the detitor, before the sale, had
indemnified the sheriff by promise or bond,
the sheriff can never recover upon such
promise or bond because they are founded
upon an illegal consideration. The debt
is returned voluntarily. After a voluntary
sale the sheriff imprisons him,
this does not exonerate the sheriff from
the creditor. It has been a question whether
the sheriff in this case, would be liable in an
action of trespass, to the detitor. It is the law
that if the sheriff in a voluntary sale seizes
the goods and retakes the detitor, that he is a
trespasser. But no man can be a trespasser
upon another, where he has the permission
of the other for the act done, as is the case of the
voluntary return. But if the sheriff retains him
after he wishes to go out again, he is a trespasser
and liable to the detitor.

106 Bailor & Bailor

If the creditor suffers the debtor to escape it is at least Law a discharge of the debt, but according to the mercantile Law, the creditor may at any time pursue the debtor after he has suffered him to leave the goal and there appears no substantial reason against the mercantile Law. This question is now depending before the ^{our} court of errors.

Suppose the escape is negligent, the case is the same as in voluntary escape as it respects the liability of the sheriff to the creditor, only if he pursues and recovers the debtor before he is seized by the creditor, such recaption shall exonerate the sheriff from the claims of the creditor. But if he is ^{not} before the recaption, the creditor recovers of the sheriff but ^{may} retain the debtor for his own security. See authorities 3 Coke 44. 32-52 1 Rolle 99-806 Brogac 89 Brodley 767-53 Strange 873 2 Mod 36. 2 Will 294. Vent 269-4 Moor 597 1 Sid. 30 1 Lech 271

Lecture 26th Decr 18th 1794.

It has been a question whether in case of an escape, where the debtor has liberty of the goal it is in the Sheriff's voluntary escape?

Profr who contend that it is a voluntary
escape, say that if it is not so the law is
idle, for the debtor may insult the creditors
by leaving the yard at any time in an
emergency and return before creditors could
possibly get a writ for the sheriff. He might
even go and visit his friends at the distance
of several miles and returning before the
creditor could get a writ for the sheriff the the-
st would not be liable if this was a negligent
escape.

In answer to this, if it came to the knowledge
of the sheriff ~~that~~ that the prisoner has once
exceeded the bounds of the yard, he is bound
to shut him up in close confinement and
if he neglects to do this, and the prisoner in
due and time exceeds the limits, the sheriff
is liable for a voluntary escape. The case would
be the same as if the prisoner made his escape
through a rotten in the jail, and when a gaol
keeper the sheriff should give out a warrant
for the same imprisonment without it. The prisoner
released in the first instance he would be guilty
of a negligent escape and in the second case
involuntary.
The arguments upon the other side are these
In case one has no like to if they and the

18 *Practical Law*

goal, to run in the hands of the sheriff, for
the purpose of the law, so that the sheriff, to make
return to the sheriff, with any, or without, that
the debtor should go any where within the limits
of the county, but that he should be confined to
the keeping the goal, and then I should be
a voluntary escape of the debtor from the goal.

Again, if this is a voluntary escape, the
bonds which the sheriff takes to indemnify
himself against any escape are void, being
founded on an illegal consideration (see page
105) But the bonds made with a surety, been
considered good in all cases. This is a candid
and reasonable argument, that the escape is not
voluntary, if it is, that the bonds would be void,
the goal. When these same principles has
been decided a case in *Dunlop v. Ash* 126

Where there has been a negligent escape we
have seen that the creditor may elect
to sue either the sheriff or the debtor
and the sheriff may immediately upon
the escape sue and recover of the debtor
debtor, and if the creditor elects to sue
the debtor he may recover of him so
that the debtor may be compelled to pay.
It is not true, but he may recover of the sheriff

It is common Law originally no action
 lay for the creditor against the debtor in one
 of an escape. But by a Statute of Edward 1 a new
 action was laid for this action against the
 debtor. Where the debtor was committed upon
 execution the action of debt is an action on
 the case and is brought. Suppose the judgment has
 been obtained on an execution and
 the creditor had appeared in the action of debt
 was brought the whole sum was given against
 the debtor. But if an action on the case was
 brought for the same purpose, the court would
 say in the case in Term 226 that the damages
 are presumptive, and they either the 100 £ as
 any other sum as they think proper. But then
 can be no difficulty in this case, if the action
 was in the action of debt, it would be the 100 £.
 The same ought to be the rule of
 damages in an action of the case which
 is consistent with an action of debt in the
 the rule of damages ought to be the injury
 sustained and not liable to fluctuate by a
 change of action. If it was right in an action
 of debt that the 100 £ should be rec'd of debt
 age, it certainly is right when an action on the
 case is brought for the same purpose.
 In case of an escape in respect to the damages
 are always presumptive, and case is a proper action

There have been an escape upon return
 process upon habeas corpus, because the
 sheriff was not liable; *Term 1811*
 in case of an escape on a habeas corpus
 a testificandum the sheriff not liable
 Our law differs from the English a statute
 transfers the burden of liability from the
 sheriff to the county where the escape was
 effected, by means of the insufficiency of the writ
 In all other cases the sheriff is liable
 so that our sheriff and county are not the
 sheriff alone is in error. An objection on
 the common law has been made by that
 in favour of our counties, if an official
 remedy can be had against the debtor the
 county is not liable.
 Our courts have determined that where the ef-
 fect is a bankruptcy they will give but nominal
 damages, the reason being the decision
 was wrong. For yet the sheriff was liable to pay the
 whole debt if a common law in the case of the
 debtors being bankrupt. And yet a man agrees
 to answer. Learn in other cases, shows an
 agreement against B. Doria bankrupt, and
 give it to a sheriff to execute it is his duty
 to do it within 60 days and if he neglects, shall
 be liable against him, the rule of damages

is the amount of the execution, and the
sheriff cannot exonerate himself from my
demands by saying that B was a bankrupt
the cases are parallel

3rd It renders the statute nugatory. The
statute says that where the debtor is able
to pay the county shall not be liable, and
by the condition of the cause the county is
not liable where the debtor is not able
to that in either case the county is not liable
4th It contravenes the general principles of
construction upon this subject. Where I have
caused B ^{to be brought} to be arrested an in rem process
& he is refused from the officer I may recover
of the officer, and the rule of damages is the
wages I should have recovered of B in judi-
cement.

Any statute, sheriff is in some cases liable for
inchoate where the goal is insufficient when
he has been negligent, as if there is a hole in
a wall that he is acquainted with and he does
not take care to stop it. But the county
is at the same time liable

Where the sheriff has incurred a liability for
an escape, and dies the action dies with him
where the ground of it being a tort, as if it
is considered as a contract the promise will
be the same for it is such an one as the
deceased is benefitted by

The Bailiff is always a lion when the thing
 said & will his claims are satisfied with the
 sheriff as he has a lion when the body of
 the prisoner till his expenses are paid him
 the goal. as he is voluntarily suffer
 the prisoner to escape is a criminal, and
 an E.g. is subject to some punishment
 to which the prisoner was, if the prisoner
 was a capital offender. The Sheriff is punished
 corporally. But in this case, he is punished
 to fine and forfeits his office for suffering
 an hundred shillings. If it be a negligent of
 care may be fined at the discretion of the
 court, but it must be an actual not a legal
 negligence

Lecture 27th Dec 13th 9m

Another class of people besides sheriffs who are
 bailiffs at all events, are Townkeepers or town-bailiffs
 that the town keeper may be appointed to do
 and if he is power to do this he is liable in an
 action to any person whom he is power, the com-
 plaint that will be given and very considerable
 damages for 500 pounds will given in some cases
 in one case. To make this case a little li-
 able, the reader must make a bond to him
 of the money that he is to maintain and
 amount to 400 87 10th 18

If a sufficient wife for the refusal to
entertain a guest, if the tavernier is full
and can't entertain any more, as if he has
some sickness in his house. But he must not
make a excuse, as a slight inconvenience
that will not entertain would occasion.

Wherever the guest brings his horse into the
house, the host is answerable for it. he is lia-
ble at all events, and if the guests horse as any
other property is stolen: the host is liable to him
what with regard to the horse, if it is put
to pasture by the express order of the guest
the host is not liable if he is stolen, any more
than any other person who had then taken a
horse to keep. he is the common bailor and
liable for negligence in leaving it loose.
C. 8 Code 32 Rolle 4

When a man put up to a tavern and the
host gives him the keys into his hands his
valle bag, or any other property that he
may the better secure it, and the guest
lose, and keeps his property with him, some
of the authorities hold him liable same
inst. but generally into the tavern keep-
er's hands. Mass. 78. 158 if property is stole.

But there are cases in which tavern keepers want
not be liable in case any injury to the property
of the host.
If a man goes to a tavern, and the host tells
him that he is full and cannot entertain

114 (21) } Thacker Innkeepers

But the traveler is not to be staying, and see
and such accommodations as he can get. If in this
case he is robbed, the host is not liable.

If the guest is robbed by his own servant, as
by a man traveling in company with him
the innkeeper is not liable & to the 312

If the traveler is robbed, the innkeeper is not
liable, unless he is the man if there is any one
in the inn, and is assumed that there is

not. If at the same time they contain more
than one stolen, the innkeeper is not liable
to the 158. In the subject see Palm 317

Loth. 88 Castron 150

In order to render the traveler's position
more comfortable, necessary, but the innkeeper
is not to be held responsible for any loss of property
if the traveler is not a guest of the innkeeper
but who has responded to the host with the

Article 3 of the 188 Nov. 877 p. 179 but 179
where men have been in a town and don't
stay there since yesterday, and the innkeeper
is not liable. In the 188 still more of
the same subject, and if the innkeeper is not
liable, it is not liable.

The name of the innkeeper is not liable
if he is not a guest of the innkeeper, and
if he is not a guest of the innkeeper, and
if he is not a guest of the innkeeper, and

all the road, which may be as short
and the saddle, & is more with his legs
than without him & will 85. In 17/18
1787

But the custom of London is not
according to that, the innkeeper may use
the horse he detain, and when he has
kept him untill the expense of keep-
ing amounts to the value of the horse
he may have him sold off to him

The custom of London is the most reason-
able and will probably obtain in this country.

It is a general rule that Bailies and Sheriffs

have a lien upon any property belonging to
that property as a person goes out of their hands
without their consent, may upon such per-
mit, to take that property without a warrant.
But if the Bailie has some consent, that
the person as a person should go away him
he takes his lien, as if the tavern keeper
should suffer his guest to take away
his horse without paying his bill, and the man

afterwards returns and puts up there again
the tavern keeper has not license to detain
either the horse or the man for his unpaid
bill. Strange & 56. Our Taverns are regulated
by Statute.

Lecture 28th

Common carriers are persons ^{who} employ
 means it is to transport ^{property} from one
 place to another. They are bailees of all owners
 and subject to the same laws as the sheriff &c.
 Vessels that carry freight are common car-
 riers. But in England subject to the act of
 admiralty, & the civil law governs.

The Gov and administration of common
 carriers are liable, where the property that has been
 lost, or to the tortfeasor receives any injury
 to M & G. But the Gov and the sheriff the
 sheriff are not liable, the reason that has
 been assigned for this is that in case of an
 escape the sheriff is guilty of a fraud, and all torts
 die with the person. But ~~with regard to the~~
 common carrier, is liable upon the ground
 of the contract, with the tortfeasor. Which is
 not in with this person. But in the case of
 the negligent carrier, it is difficult to ~~ascertain~~
 the carrier of any tort in the sheriff. It
 may be more proper to ground the liability
 of each of these officers upon their contract
 to execute their duty faithfully, which is the
 implied contract that every public offi-
 cer has. Then the true ground of the distinct
 law, between the liability of the common

§ 8 Bailiff's name common carrier
Common Car. and the Car of the Sheriff is
that the contract of the Common carrier
is founded on a valuable consideration,
whereby the agent is bound, and there-
fore his Car should be liable, but the
contract is not founded on a valuable
consideration.

The authorities upon this subject are 2 Hen 175

1 Col 2 2 Lev 64 1, et 1239. 2 Max 270
1 alk 143.

To make the common carrier li-
able, the whole trust of the property must be com-
mitted to him, for if the owner, for instance,
should send his servant with the property, and
not deliver it to the carrier, he would not be
liable. Strange 690.

Inevitable accident excuses the carrier see
1 Wils 281.

If the common carrier has been im-
posed upon, he is not liable. see a very good case 4 B. 2298
1 Vent 238 & 1 W. 24 1 H. 5 115 & 116 de la Law
the carrier sometimes is liable, when he has
delivered the property at the place where he
was to deliver it. 3 Wils 429.

If the carrier has converted the property, he
is liable in an action of trover, but the most
common action is an action on the case.

Bailment is not respects the naked bailee, who is only trusted with the property for safe keeping and has no reward - he sometimes is to do certain acts with the property, as where a man bailes a horse to a friend on condition to make the horse for him to a place, then the friend is not to be trusted, tho there had been no contract. See this subject the English treatise of in the case of Leigh v. Barnard. I may say no ordinary negligence will subject the ^{to bailee} bailee, but it must be such a degree of negligence as will carry with it evidence of fraud in the bailee.

The property in the hands of this bailee is not alienable and if he undertakes to sell it the property is not his. Because the nature of the bailment is such that it is not to be alienated to anyone.

Where the property in the hands of the bailee is claimed by another besides the bailor, it is not the duty of the bailee to judge of the merits of the two claims, but it is his duty to discharge himself by returning the property to the bailor if a man can be secured. If there is no evidence that the bailor stole the property, the bailee is safe by returning it the same way as if the bailee has not committed his duty to the bailor. The property to the bailor is then in law it belongs.

120 Common Baillee

Lecture 29th

We have mentioned the naked baillee to keep, and now of him that has something to do with the property, as to remain perfectly without accident and to oblige a friend, if he discharges this trust negligently, so that the article is damaged, he is liable for the loss. While the naked baillee to keep, would not be liable, see the case of Bay & Pinner 2 Wms 271

But there is the propriety of this distinction if the one ought to be liable the other ought not to be likewise. There only an exception in other cases is the trust, and if this is undertaken & negligently performed, it is sufficient to subject the undertaker. I said that by the undertaking to do an act, with the property, confidence is reposed in him. Which if he abuses, he is liable. And in the baillee to keep there is the same confidence & trust, and by a similar abuse of this trust, he ought as much to be liable as the other, inasmuch as the principle on which the baillee to do is liable, is that he has undertaken a trust and abused the confidence reposed in him. The same may be said of the baillee to keep

But the Law is as at abridged law in 4 D. 114. The Law is not so established 14 Blackstone 156 & Jones on Bailment

Common Bailment. Where a man lends to another a thing gratis or for hire, he is a common bailment, & is he person bound to transport goods, &c. and the person to whom a thing is pledged is a pawn, and a bailment for hire. But may happen to the thing bailed. The rule is this, the common bailment is always liable for negligence, can be termed negligence but the term negligence must not be strained to reach the common bailment if he has been as careful as a ordinary man would be in such circumstances, he is not liable for an injury that may happen to the thing bailed. He is not liable to stand as he keeps himself within the limits of the bailment, and conduct like a prudent man. Where a man has hired a horse and is not to pay any thing for it, and an injury befalls him, the owner will always be an against such a man, yet the rule is the same as at abridged law in.

If the bailment exceeds the bailment, the bailor is liable in all possible cases for any injury that happens to the article bailed in consequence of exceeding the bailment, & the bailor is liable.

But, it may be a question whether the liability
to a second hirement with, no liability
in every, double use, for instance, that may
happen to the property, in an engagement
the liability of the bailment being exceeded,
as a hire on horse to ride to Easter, and
ride him to London, the horse die at home
on with the first, is the bailor liable? This
question is now depending before the court
of Common Pleas, now sitting in the town.

It is now certain that had the horse been id-
led with lightning, that the trailer would be
liable for this, in consequence of the position
the bailment, and he is a wrong doer, and
the Law of Bailments which before protected
him, can not afford him any aid, when the
fault is on his side.

He said that the Bailie there exceeds the
hailment is not a trespasser, and the Bailie
cannot justify a reception, but his remedy
against the Bailie is an action in the case
But this is a most remarkable principle
as when once the Bailie has exceeded the au-
thority, the case of bailment are no longer in
his favor, and he is upon all principles a trespasser.
It is agreed on all hands that one who receives
a horse from a friend, he is a thief and in
every respect liable to be treated as such.

and his bailment shall in no case be affected
 upon the same principle he who uses a horse
 with a trespassing mind, shall be considered
 a trespasser, and shall have no benefit from
 the bailment. Now the exceeding the bailment
 is presumptive evidence, of the trespassing mind
 in the bailor at the time of giving a bailee
 a horse to throw the burden of proof, upon the
 bailor.

The pawnee of goods is a common bailor, and
 the grounds of his liability are the same already
 laid down. The pawnee may in some instances
 use the thing bailed and in some not, where
 the thing will sustain any use for the use
 he may not use it, but where it will, some to
 use it in his business, he is at liberty to use it. He may
 use an horse and such like creature, sufficient to
 carry on his business. The pawnee uses the article
 bailed, it is a bailment, and if it is in his
 use sustains any injury he is liable. But this
 seems to be an inaccurate rule. The principle
 upon which in the latter case he is liable, is because
 a damage is done by him, exceeding the bounds of
 the bailment, and he is liable not only for the
 damage, but in every possible case where any
 damage is done to the article by the use. Where the article
 is used in the business of the bailment,
 and is exceeded, in the use used no injury or
 damage is done. C 90. As the pawnee is
 of an authorized person in the use of the article

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Samuel Chase

2nd

Lecture 30 Dec 18th 1794

One thing was omitted under the 1st head after
in this state, it is a law of the United States that
the 2d must be held in the state where a return
suppose a creditor in New York sues his
debtor in Littlefield Ga. and he should escape
because the insolvency of the local. By what
means will these courts sue the county lie
in the circuit court for that court are bound
by the Law of the states in which they sit,
and it is a Law that the only remedy against
the county in such case is by application to the
court of the same place of the county. There is
no way pointed out by which the county can
be sued before the circuit court.

A Pledge is a pledge in the hands of a creditor
for the security of his debt, and when the debtor
will tender the money for which it was pledged
the entire right of property reverts in the paw-
nee, and the pawnee is obliged to ^{red} deliver that property
which he before the tender ^{held} in
the Pledge. But suppose the pawnee neglects
to deliver up the Pledge upon the tender, and
it is lost or injured in the hands of the pawnee
the pawnee may have his money again if it
is a money Pledge. He is not made an assignee
of the thing in bailment, as the bailment is often said, but
remains a creditor in regard to the thing

As to the original debt, it is an argu^{ment} that
had been a pledge, see then the test to this
subject Deet & Med. 132. Cal. 673. 2 Loh. 92
De Lit 89 Crofac 245 Yel 179

If the pawnor pay more money for the re-
ceipt than of the pawn than is necessary, or
due he may recover it back, see a case in
Stronge under head of tender.

Is the pawnor's property in the pawn such
that he can assign it, and more? Is the
property of the pawnor, the lender is then
assigned to, or does not? According to most
of the authorities the pawnor has no other
property in the thing pawned than the
custody, and cannot assign it: but (3. 4. 11.
under, the head of tender, is an authority
that the pawn is assignable.

If no time is mentioned, then the pawn
is to be redeemed the pawnor may re-
deem any time in his life but his exec-
utors may not, according to the current
of authorities, but Hammyn is opposed to this
case and then it will stand upon the prin-
ciple of Jewish mortgage. Lender may
be made to the Ex^{ecutor} of the pawnor.
If the time of redemption is set, and lender
is not made in the time the property in law
is not recoverable in the pawnor ~~intentionally~~

126 Redemption of Pawns

but the equity of redemption remains in the pawnor, as in mortgages, only the executor may not tender, according to the current of authorities.

Where the time is limited for the redemption, as has been exceeded, the pawnor may sell the pawn, and the sale vests the property absolutely in the vendee, and is a discharge from all claims of the pawnor to replace the article, upon tender of the money. But the pawnor must sell the article for a full value, as much as a man in his situation can sell for, and if the money for which the pawn is sold exceeds the original debt the pawnor must be returned. *Page 261*

Debtor pledges to a creditor another creditor by redeeming may the the pledge in law the first creditor may be an agent to collect and then buy him back from the pawn in this respect it differs from a mortgage for there the application must be made in a certain

at pawners property to the value of 1000 and the pawnor may the pledge and if he has more money without the pawn the pledge it shall be taken with a pawn and the debt. But there are debts of an alms nature than the one left untreated

with the pawnee, these creditors may redeem
as in mortgages by paying the debt in which the
article was pawned. Precedents in Orange & 20

A. pawns to B. who pawns to C. the same ar-
ticle. C. cannot redeem, without paying the
debt due to C. & 2 Vernon 691. This establishes
the idea that pawns are assignable, & the
only principle upon which it is made li-
able to redeem of C. is that the bailment is
of such a nature, as is calculated to receive
But a mere naked bailment without
pawns of assigning, is not calculated to receive
and the Bailor's assignee has no property in
the article bailed and assigned, but which he
can hold it against Bailor see the case of
Horton 1 Will 8

The Pawnee may use the pawns and
recover his money upon the original
debt notwithstanding the pawn in his hands
Strange 919 unless there is an agreement to
the contrary

Supposed may be pawned 2 Wyl 279

It is considered a crime not to deliver up
the pawn upon tender of the money, and the
pawnee may be indicted for this, 2 Lash 511
Coke 277. This is contrary to an old maxim & side
to the more civil injuries are not indictable
3d Edw 3 11 Bond 240

28 Contracts

Lecture 31st Decr 20th 1794

On contracts. It is a rule of law that not good the parties must be capable of contracting. There are certain persons incapable of contracting. Infants & mad persons are incapable of contracting. For this subject fully considered under the head of persons &c.

The reasons why the wife cannot bind herself by her contracts are these. 1st the Law has taken from her the means of discharging her contracts by putting her property into her husbands hands. 2nd the husbands marital rights shall in no possible way be infringed; his right to the person of his wife is paramount all others, and if she could bind herself she would be liable to be taken from him, and confined in jail. But find a case where these two reasons do not exist, she may contract apart from her contracts. When case she has some estate in her own right, more the first reason does not exist, she is therefore bound by her contracts to the extent of that estate.

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But her person is not liable for it
was the marital rights of the husband would
be affected. That the wife may bind herself
to the extent of her separate property. See
1 Brown v. Drancy cases 16
if the wife lives separate from her husband
by articles of separation, neither of the two is an
adult. For as to the first she is entitled to her own
acquisitions and has therefore the means of
discharging her contract, and as to the second
the husband has no claim upon
her person.

Infants are incapable of contracting
or may rescind their contracts. This is not
founded upon commutative justice, but
on its foundation in policy. See this subject
under the head of Infants or Parent & child
Idiot, insane person, Lunatick, &c can
acquire property by descent, & also by grant
and property in these ways will vest in them
independent of their spent. But he may
disent it if he comes to his reason, and
so may his heir. A contract of such a per-
son is void. Denit is in mass that they
are Idiot Lunatick &c 3 Mass 296:307
2 Ray. 316 Carthw 211
But it is a question whether lunatics can
renew the possession of their estate, can

around his contract, that his heirs and representatives may, there is no question.

There is an old maxim that a man shall not multiply himself. Blackstone treats the maxim as an idle whim, which Powell contends for its reasonableness. The principle reason assigned by him is that it would run a deer to find if a man might thus avoid his contract. Yet these very contracts may be avoided in the lifetime of the lunatic in two ways. 1st by a writ de iudiciis inquisitis and then a scire facias in the name of the king issues against the person in favour of whom the contract is made. This writ is returnable in chancery where the inquiry is made and if the contractor is found to be a lunatic, the whole contract is ripped up. 4 Reports 126.

The contract may likewise be avoided in chancery, by an application in the name of the Attorney General, for, tis said the deed must not be party to the record but it is now established that he may be a party to the record by joining with the Attorney General. There can be no question why the party himself may not avoid his contract. Law as well as in chancery the danger of fraud is the same in both cases.

B. H. H. 170 30 PM 105. 2 PM 118

Contracts

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of that species of insanity, that arises from drunkenness, and its operation in contracts. Drunkenness of itself is no ground for avoiding a contract, it is said. Yet in fact contracts made in intoxication may in some cases be avoided. If it is a fair contract, and he has not been overreached, he cannot avoid his contract altho drunk when he made it.

but if it is an unfair bargain, and the person who has got the bargain of him was the occasion of his drunkenness, the contract may be avoided in chance. If the person who has got the bargain of the drunken man, was not instrumental in getting him drunk, he laid down, that the contract cannot be avoided. 3 Wm 120
257

July 19

But there is one principle upon which both
 some think that any unfair contract with
 which a man may make while drunk may
 be avoided. It is a rule that if one man takes
 an undue advantage of another's situation
 and thus gets an unequal advantage of
 him, a court of equity will relieve against it.
 Where a man is of a weak understanding below
 the mediocrity, and contracts, some of his con-
 tracts may be set aside by application in
 chancery and some not, the weakness of the

Contracts

understanding, it is said, is not of itself a sufficient ground for setting aside the contract. But if there is any fraud in obtaining a contract from such a person, it will set it aside. 3 P Wm 129

If in this case there is no consideration or a very inadequate one, the court will infer fraud and set the contract aside. It is true that fraud between parties of any description will vacate a contract, but that fraud is never to be inferred from any inequality in the bargain. But in this case the inequality is a evidence of fraud, it is said, which is contrary to all rule, it is inferring the fraud from the inequality of the contract. It is evident that the weakness of the understanding is the ground of setting aside the contract, notwithstanding the rule. That weakness itself is no ground for setting aside the contract.

Lecture 32nd Decr

Aliens. A common Law the only were aliens who were born out of the League of the king, & those who were born within the League of Parents, or in obedience to the king. 7 R 16 But by a statute made in the reign of Edw 3 children born of parents subjects of the king tho' out of his League are natural born

Principles of Law

subject of the wife, father & the same with the
 name of husband. The decision upon this
 statute have been that if the father only is
 in allegiance to the king, that the children are
 natural born the mother is an alien
 1000. 601. 120 198. It seems however that
 in order to be benefitted by this statute the
 parent must have had licence to marry
 in Eng. This was the Law of Eng. as it was
 previous to the migration of our ancestors
 to America.

The court of King bench have of late decided
 that a child born of an Eng. mother & an alien
 father, born out of the Kingdom, is not
 a natural born subject, & is not inherent to
 the crown in Eng. and the court are of opinion
 that the requirement of the statute ought not
 to be complied with, that both the parents
 must both be natural born to be English sub-
 jects of the king. A Decree of 300

By the Statute of Ann & George 2nd, all chil-
 dren are free men & natural born subjects,
 born of English parents, the out of the realm
 unless such parents are voluntarily of service
 as in the service of some foreign power
 or unity with great Britain. Parliament can
 not raise any alien and thus the alien
 has no vote or share view & goes back to his birth (61133)

Contracts of Aliens

An alien cannot inherit any real estate nor be tenant by Caustesy, nor can the wife be an assessd Co Lit 8. 7 Edw 2 13 Martin 113
Of the alien power to contract, as it respects con-
tracts about real property, there is in him no pow-
er to contract. If an alien purchases land, tho
it direct the grantor of his title, and the fee
vests in the alien yet when office found,
as it is called, the land immediately reverts in
the crown, and the alien is only the channel
through which it passes to the king Co Lit 2
5 Edw 2. If the alien should die before office
found, it goes to the crown. If he should
grant a lease the land before office found
never granted would be void. For when office
found it would go to the king Co Lit 12
An alien cannot have a lease for years, unless
the alien merchant has come into the country
for trade, the exception, purchase of trading he
may have a lease of a house garden & store
2 Ed. 1 134. Such term, if he departs, then, in-
falls to the crown, and if he dies, without heirs
it goes to the crown, but his legal
may hold it.

Slaves may make legal moral contracts, but
when enemy cannot enforce such contract
by a suit at Law, all infidels were formerly con-
sidered as outlaws but not so of recent date 26

Contracts of Aliens

835

An alien may be an Exr. tho he be an alien
or enemy, yet he may as Exr enforce contracts
to b. c. 9 b. c. 68

The power of naturalization is accepted in Cong
res.

Treaty of peace between Great Britain & America

By an article, real property is secured to the
subjects of each ~~country~~ ^{part} country. That is an Eng-
lish man having ^{land} in America shall
hold it, and the same is returned to him. But
Mr. Pease thinks that the land will not de-
scend to their heirs.

It has been a question whether an alien enemy
could recover interest during the time in which
he could not enforce his contract, as during the
war: he cannot. By the treaty of peace the claims
of English subjects and refugees were not to be in-
creased, which can mean no more than that they
were entitled to recover all their just debts.

The question then is whether they are to recover
interest during the war, war hands given
refuse. It is agreed on all hands that a tender, will
stop the interest - and if the debtor is ready to
tender, but the creditor by absenting himself
has put it out of the debtor's power to tender, this
is accounted a tender, and stops the interest.
This being considered as a tender the debtor is
entitled to the money for the creditor

and is liable for no injury that may happen to the money, though his hands are not to be taken by his negligence. He therefore is not liable for any depreciation that might happen to that money during the time, but the creditor must sustain the loss. See Lit 207g & h

Lecture 3rd

Contracts are either express or implied. As under a person liable upon either the Law supposes an assent, and the form of the action proceeds upon that ground, whereas the truth is, in a great variety of instances there is no assent. The law has rendered the party liable because he ought to be, not because he is.

There are a great variety of instances, in which the party is made liable where we cannot possibly suppose an assent or a responsible assent in the case of a mortgage. He ~~stands~~ ^{stands} by and seeing the premises mortgaged to a son and wife and not performing the covenants of the first mortgage, the second mortgagee will be proposed to him, that we cannot suppose an assent in the first mortgage that the second mortgagee would be proposed to him. 1 Wm 393. 1st of all, the want that assent, not necessary to make a party liable see 1 Burn 107. And since a man sells a piece of land in the middle of his term, he is liable for all the rent of the land, though he has not a right of entry, the court is of this opinion. — 1 Damfard 269

Contracts, Dureps

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Where the husband turns his wife out of
house, he is obliged to support her, and the
law makes him liable to a certain extent
for her contracts, but nothing more, besides,
than that there is no consent on his part.

A man is sometimes discharged from his
contracts by reason of some circumstances
offending that contract. As 1st Contracts ex-
torted by duress, or any security given may
be avoided, in a court of law by pleading the
Dureps

Dureps is of two kinds. 1st Dureps of im-
prisonment which is the unlawful deprivation
of liberty, and if the person in this situation
gives a bond to recover his liberty, a rent is
into any contract in consequence of this im-
prisonment. by pleading the dureps he may
avoid the contract in a court of law. Or
if the imprisonment is legal, but the con-
tract is obtained by tortious and unjustifi-
able usage, it is dureps. If a man by dureps
obtains a bond the amount of which is no
more than what is justly due to the man
committing the dureps, yet in pleading the
dureps, the bond is avoided. But this is not
the case in these cases.

Dureps is not pleadable to an enrolled de-
ed 1 Rot 862. The grant of this decision is that
which cannot be executed without a fine

Contracts. Durep

to face same officer, by which means the durep is removed. And it is an established rule that a contract entered into under durep may be confirmed (and be made good) when that durep is removed. Which proves that such contract is not void but voidable only. All our deeds in this state are enrolled deeds and probably subject to the same law.

A. is under durep of imprisonment B. to obtain his liberty enters into a joint bond with him. such bond cannot be avoided by B. tho as to A. the plea of durep is good. Cro Jac 187. 2 L Ray 357. But here ^{no} principle by which this subject of durep is governed, with ^{warrant} such a decision. The principle upon which the courts make void a contract entered into under durep, is that the contract was not the free and voluntary act of the party and B. in this case seeing the distress of his friend A. can hardly be said to act freely when he contracts to relieve him from his distress and upon this principle the courts have uniformly decided that if any relation ^{exists} existed between A. & B. that B. might avoid this his contract by pleading the durep. as if A. was servant, or wife or child of B. 2 L Ray 123. But aside from this principle no man should be allowed to take advantage of his own distress, or to derive any advantage from any voluntary act of his when he is under durep, as if he were free from any such distress.

Contracts. Duress

179

Where duress is committed upon a man in distress, and in consequence of this he contracts; can he avoid his contract by pleading the duress? upon this subject the authorities are contradictory. But the principle would decide in favour of the plea. Suppose a man is an runaway and his horse is unlawfully detained from him, to procure him he gives a bond. This cannot be said to be done freely.

Menace of life, limb or imprisonment, if the threat is of such nature as to induce a man of ordinary firmness, it is called duress in law, and a contract entered into under this duress will be set aside in Law. But the contract will be set aside for no trifling threat. If one threatens to burn the house of another and to prevent this the owner executes a bond, this cannot be avoided at Law. But the Law is very different in Equity. For a contract entered into to the fear occasioned by any unlawful cause, will be set aside. Whether it is a threat that may injure his person or his property it is the same. For if in consequence of the threat he executes the contract he may at all times avoid it in Equity. Lev 68. It is no matter whether the fear was occasioned by the party to the contract, provided he was going to it. If so too, a court of equity will set aside the contract entered into by B to procure the liberty of A who is under duress of imprisonment. If the fear is generated by a lawful cause, as reverence for a parent, produces the contract equity will not set it aside.

140 Contracts.

These contracts unless I can under the cjs may be confirmed when all apprehensions of fraud are at an end. by such confirmation the contract is always held in chancery, unless it should appear that the person thus affirming was ignorant of his legal right to avoid the contract. 3 Pym

2. R. H. is a legal maxim that ignorance of the law never
 225 shall avail a man as a plea. but this maxim is far from being true in ~~all~~ cases.

Lecture 34th. December 25th 1794

Ignorance of a persons rights will sometimes invalidate a contract. as the schoolmaster case. Which is this. 3 brothers the middle one dies, the eldest & 3d. have no rights, but the 2d. & 3d. would feel to him they are bound to the schoolmaster. He said that it went to the youngest. the eldest accordingly released his right, to the younger brother. It was held that the elder brother though ignorant of the law was not bound by his contract to release

the same in the case of the person assuming himself liable to pay a bill when he has been and it has been protested and cash notice of the protest is not made to him by the payee in such case the drawer is not liable to pay the bill by law. But in supposing himself liable promises to pay it to the payee and the drawer is bound to pay this is a mistake and void the contract is void.

1402

Contracts, General

Lawyer is to use the capacity to an act
 that shall the business of his clients, and when he
 is engaged to, he is liable to have a liability in
 damages to his client. Rolle 91495 The same
 is the case of every person exercising a public
 employment and under the same generally there is
 an implied contract on his part to take the
 best of his work as a truly and well as a
 Physician. Blacksmith &c. 12 Ann. 2. 276359

But the man who is not of a profession or trade
 is who understands to do any business in the
 line of his profession, takes more responsibility
 in relation to fraud, as that his
 chief. The ground of this is that there was, in fact,
 no election. If so, could it be made that with
 but three days assuming not to have a claim, in a
 relation of fraud lies against me, as that is no
 election in the respect to the. of, I am a lawyer
 and a reading must be in a relation to the, as if
 I am a lawyer, I shall more, to read my papers and
 business. I have a relation to the, as if
 for the connection. The respect to the. For
 not, and policy may be to the same rule
 with respect to the, as if, it is a general rule
 that if there has been any fraud in the execution of
 a contract, it is void, as if a man has been deceived
 to execute a contract, he is void, he is void
 void. ^{and a note point} It is void in the law, and is void
 in the law, but it is void in the law, it is void

on the consideration, to do it in Law
 correct contract. as where I sell an unseal'd
 paper as a deed, or a card of Law will not
 void the contract. But he has his remedy in
 equity, he will recover his damages for
 having been deceived by a will in Law.
 The Law in this state is a little different, for an
 equity will say that where the fraud in the
 consideration is total it shall make the con-
 tract, as where a counterfeit may have been
 paid for the estate, where the fraud in the
 consideration is only partial it shall not
 make the contract. But a complete lie in con-
 sideration.

For the mercantile Law fraud in the
 consideration makes the contract

For equity the fraud in the consideration will
 be relieved against. If the fraud was total it
 goes to the utter destruction of the contract
 of the fraud is partial it will be relieved against
 to the extent of the fraud, so as to do equity
 by returning the parties, as if a man is defrauded
 in the consideration, and yet has received
 part a court of Law will not refund
 neither will a court of Chancery do this, for
 the fraud would not probably have induced
 the contract, but will release by release
 leave the party to a common Law at Law

Contracts. Exemption 145

There the fraud in the consideration is total. For they will allow the person who has been defrauded to bring the action of assumpsit as an assumpsit and recover all the money he has retained and this action will be sustained in every instance where one has by one means got another's money in his hands which he cannot in good conscience retain. If then they would vacate the contract where the fraud in the consideration is total, why not where it is partial? The principle will go the whole way. say the house, and in any case where the contract has been executed by fraud, it must be vacated as said. I wish to see a judge in Scotland make 30 £. and by a false suggestion and oppression I am induced to give the sum of a large that is not worth 10 £. This contract ought to be treated as void. The minds of the parties had never met. In small contracts it is held otherwise. The contract is taught the repair to be carried out. The vendor might sell an iron of iron, a the house, and the price received from the many persons in debt to a shop. or the vendor might re turn and tender the house, and then having his iron and debt as a gift. See a case in the first of Douglas. The principle can be applied to the case of the house.

An action on the case for fraud, but to

the same the damage, than this subject the
the same the damage, than this subject the

the same the damage, than this subject the
the same the damage, than this subject the

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the same the damage, than this subject the

Contracts. Grand Jury

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4th Is a warranty of fact which the vendor
is not in a duty to make and is not 96

5th Is a false warranty. This appears to be
to be applicable to the contract and is not 96.
A warranty in order to be good must be made
at the time of sale. For if made before a sale
there is no consideration and is not a warranty
and therefore the warranty is not good (see also 96)
6th Strange H14 in the office is not the
warranty liable for a false representation. Such
is the affirmation or warranty in the contract
the defect is visible to which it relates.

6th Where a man lies without any benefit
himself and it involves a damage is another
the action lies 3 Durn 51

Where this action does not lie

1st That does not lie for the sale of a bad article
not knowning it to be bad and that the seller
is not warranting by the vendor. For then one
A buys an unsound horse of B. B. warrants
him to be good, meaning him to be sound.
A sells the horse to C not warranting him
to be good to C. This question has not been de-
cided

Lecture 36 Dec 27th 1844

The following case do not conform with the
principles of the common law. A man not
corrupting him. 4 is a rule. The principle is that
if a man does not say to the jury a false

your own judge, an action was not held
to lie for the damage Moor 126. 11. 1446
12 Lev 102 yet 20. Cro Jac 197. These cases
not founded on principle
There is a rule which has obtained. That if a
man does an act that carries with it a
by which another is injured, yet if he can have
a complete remedy by another action,
This means rather, the action of fraud will
not lie, as where one counterfeits a name
to a bond. The evidence which would support
the action for the fraud, would evade the bond
and therefore, it is said no action will lie. And
where the money has been paid upon an
Estoppel and he who favors it was still pre-
sented. The Debtor may have his audit a que-
rela. and the for, shall have no other action
Molle 100+2 But this is not founded on
any principle

Fraud where there has been no actual
deception. This species of fraud, so called, is
nowhere to be relieved against except
in Chancery
The case where a court of chancery will re-
lieve (under this head), are where there has
been great inequality, in price, in the contract
great unreasonableness in the contract, or
imposed hardship upon the party. In
any of these cases a court of equity will relieve
But it is laid down in the books, that re-
lief will be granted for none of those cases

Contracts

But say they, the inequality, unreasonable-
 ness is evidence of fraud and in this, the party
 itself can disprove evidence of the fraud
 that they can't. I say. Why then will they
 not say I can't of equity will relieve for
 the inequality &c and say nothing of the fraud
 for it amounts to the same thing as if
 I should say the fraud is only obscuring the
 business, and it very frequently is. Other
 in these cases go to the appearance
 of fraud. It is more proper to say that a court
 of equity will grant relief where there has
 been inequality, unreasonableness, &c.
 But a court of equity will not interfere where
 there has been only some trifling inequality
 &c. but it must be excessive. The authorities upon
 this subject are 2 B. & C. 449. 3 W. 290. 294
 Smith & Bramley Daughl's 10 W. 310
 2 B. & C. 170. 2 B. & C. 167. 1 W. 118

Lecture 37th Decr 30th 1794
 If contracts impossible to be performed
 if the thing contracted to be done is
 impossible in the nature of things, the
 contract or covenant to do it is utterly
 void. If the impossibility arises from the
 peculiar circumstances of the contract
 it is no excuse, and cannot be set
 up in bar of the contract. As there

A. totally destitute of ^{the} ~~the~~ ^{power} to contract to pay 100 L. it may be impossible for him to perform that contract, as it would be to go to the moon, yet that impossibility arise from his particular circumstances, and from no impossibility in the nature of things.

Where the impossibility does not arise from the act of the contractor, a court of equity will not compel a specific execution of such contract, but he has the injured party to his remedy at Law, where he will recover his damages for breach of contract, as where A. covenants to convey the farm of B. to C. but cannot purchase the farm of B. here the impossibility does not arise from the act of A. and a specific performance will not be decreed in Chancery. But where A. covenants to sell his ^{own} farm to B. and immediately conveys the same to C. in this case the impossibility arises from his own subsequent act, and a court of Chancery will decree a specific performance. See Brown, Par. cases 117 L. & Rayd. 1164

A contract entered into, which is possible at the time, but which became impossible by the act of God. The Law of the Land, or the act of the covenantor himself, is not binding to 100 L. 216.

Contracts impossible 151

Suppose the form of the contract, to do
 a thing physically impossible, is changed
 on one hand with a condition, that the con-
 dition discharges the impossibility, the Law
 is different, and the impossibility is no excuse
 as where A. gives, with a penalty of 50 L, a condi-
 tioned to be void, upon his, going to the moon
 the whole bond taken together, is no more
 than a contract, and the same reason that
 would make void the contract, ought to
 make void the bond. The definition is
 not founded in principle Plowd. 32.
 See 1. Hall. 172 where the bond was voided
 the Law here laid down only applies itself
 to executory contracts, But if an impossi-
 ble condition is annexed to an executed con-
 tract, or suppose the condition became
 impossible by the act of God, yet the estate
 vests. As for instance, I convey, to B. my
 land, provided that if it will go to New
 York and procure a title to B. to a certain
 farm there, then the land which I conveyed
 to vest in him. This becomes impossible
 by the act of God. for A. dies, the farm remains
 unsold in B. — I can never go to B. when on
 his death, the farm vests in B.
 If the impossible condition is precedent
 the estate will not vest, but if subsequent
 it will.
 An action of indebitatus assumpsit lies
 for money paid upon a contract
 which is impossible

841 *Chrysomelidae* *Chrysomelidae*

we are engaged in a
battle with the enemy,
and a victory of ten thousand
with us only, the rest of the

na he tufella *t. l. t. f. e.*

As many goods as the nation has a right to

[Faint handwritten notes at the bottom of the page]

be so def. in a
large hand. and a true sh

father's expectations. But at a
 period I was a student and my
 blood was full of the same

Should they call it a f. n.
the next to us, or if so
it is a f. n. also, as it

See the authorities page 163

Lectione 39th J. H. W. 1st 10

USA. The transactions made by Mr. [illegible]
in [illegible] are to be found in [illegible]

Contracting

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There may be a contract to
sell a lot, but it is only if the object
of the sale was a loan. For we are in the
case of a 1st L.C. contract, and
it is a contract to sell him a pair of oxen
for \$1000 and that his note for \$1000
is given in exchange for the oxen. It is not more than the
value of the oxen. And the contract is
for a loan. For there was no money
lender. If the articles said, we put
at an extravagant price & the object of the
sale was a loan, that it would be considered
as an ordinary contract. But here, did
court of justice ever relieve against exa-
bitant bargain on the ground of the
the object of the bargain was to pay the
whole & a third of usury is provided in the
act, which declares a certain rate of interest
and the loan is to be lawful and all on one
that is legal. But the fact no where declares
a certain sum to be the value of an oxen
and that all above that is illegal. The act is
no ~~reference~~ ^{reference} to any other subject than
~~money loaned~~. Besides can't we tell
times relieve against exorbitant contract
but upon an entire different ground, on
that of the being usurious.

Lecture 4th January 3rd 1795

A man may receive the ^{legal} interest on his note any time within the year and again put the interest upon interest which is more than at the rate of six per cent. yet this is not usury

In order to make a contract usurious the interest must be a compound agreement between the parties and an intention to get more interest than the law allows for no mistake either in Law or fact. ~~But~~ When more than legal interest is taken shall be considered usury.

There are a variety of methods of computing interest by which more is taken than the legal interest is taken, if any method is in common use, is made use of by which more than legal interest is obtained the shareholder shall not be considered usury if there was no intention to evade the law but some new modes are devised for the sole purpose of evading the statute which is intended to take too much interest.

The custom of merchants to take more than the legal rate of interest for forbearance & giving day of payment is not usury. and hence a merchant having a bill which for the money he will sell at 10% but will not credit them under 15%

No bargain having an exorbitant it may be can be usurious unless the object was a loan.

As a general rule the interest on the money when it is a loan made is to be given.

Usury

But where a merchant in X state both note
and a man in this state carrying 7 percent in
note, and renews his note in this state and includes
the same note, it is not usury.
If a contract is made with reference to an
other country and to be performed in another
the interest of that country being paid in
the note it is not usury if it exceeds the le-
gal interest of the country where contract is
made.

Contracts of bargain where the principal is
not taken are not usurious, tho the interest be
borne in such contracts exceeds the legal
rate. but there must be a real & not a
colorable bargain of the principal. In an
usurious contract it is that even name, taking
of cattle &c is not usurious. If the contract
is to borrow cattle to be performed that the
cattle worth the interest. the principal is
not increased and if more than six percent
is over it is usury.

The practice of buying sheep must be an
exception from the rule. It is common
to sell so many pounds of sheep. to be re-
turned at the end of the year. with 2 to 4
at a head, which is much more than
the rate of 6 percent. and the principal
is not increased. This is sanctioned by the general
practice of the state.

I have a letter from Mrs. J. M. J. dated 12th Nov. 1855. She says she
will take a hand in the management of the school at the end of the year - and will be a great help
with penally if not fair at the time. But the school
the school will pay for the whole de-
sign of such penally in order to remain the same
and yet more than to be so in the school. It
is a very good school and very good. 2 Nov 1855

[illegible]

both Pth & Dth out of late the ~~defendant~~ party is
 examined. The Dth says the court are to as-
 cend as a court of chancery and in that case
 the Dth is never to be examined on oath; un-
 less the Pth desire it in the same way in
 which the Dth has ~~been~~ ^{been} asked to come to the
 Dth is evidently intended that the Pth only
 should be examined. A ~~few~~ ^{few} years from the present
 time following the same ~~rule~~ ^{rule} ~~as~~ ^{as} ~~is~~ ^{is} ~~now~~ ^{now} ~~in~~ ⁱⁿ ~~use~~ ⁱⁿ
 has mentioned in the Dth may be
 examined if Pth applies to him for this
 purpose

The Dth is of opinion that no man
 should ever be granted to the Dth ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case}
 where he pleads ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case}
 that no man shall ever be granted to a man
 where he is not a witness to a fact or a
 Dth is not to be granted as a just debt, but to
 grant the other party to come in and
 whether and at the Dth to be admitted to
 make a plea ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case}
 the Pth in this way to be permitted to file
 a bill in ~~the~~ ^{the} ~~case~~ ^{case} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case}
 must be on the second day of the sitting of the
 court. The Dth having decided the legal re-
 medy can not have a part to the equitable
 The remedy contained in a contract may be
 had & an usurious note assigned the
 2 July 1812

ignores applies to the Oregon. No does
 object to the payment of the note was
 against him. It is uncertain. My this on
 that he is opposed, in an ever leading
 the money. No renewal of the security between
 the parties, will charge the money. If a sure
 & can cant are blended in one security
 that security is void. But the question of this
 blending is doubtful; whether the joint can
 trust by this connection is voided, so that no
 recovery can ever be had upon it is a point
 which has not been decided. The rule
 is in question that the security being void
 the parties sell it to their original state
 and are in the same situation as if they
 had never been blended together in one
 security.

But the 11th. deals the money specially. It
 always be stated to be by express agreement
 and in stating the money, it must be spec-
 ially set apart more than legal interest
 was stipulated for between the parties.

On the 11th. may be the general rule
 and under it give in evidence the

various authorities upon the subject of usury
 Bro. fac. 708-20. 259. 677. 2nd cent. 89. 1st cent. 244-5
 244. 597. 244. 597. 244. 597. 244. 597. 244. 597.
 603. 741-20-25. 2nd cent. 89. 1st cent. 244. 597.
 2nd cent. 89. 1st cent. 244. 597. 244. 597. 244. 597.

Lecture #13, January 8th 1911

A sells to B a horse on the first Jan. for 20L to be paid in the 1st year. The horse is delivered to B. If the money is not paid at the time the sale is said on the 1st Dec. A sells the horse to D. January came & D does not pay the money, yet the sale to D is said to be void. Plawd 432 ^{not void on the date of sale by installment in exchange let him} A man may effectuate the sale of property to which he has no actual or potential right. As where it grants to B. power to sell or lease all lands that he shall receive by purchase & purchase & B. leases it the lease is good, for not a man does by another he does by himself.

There is a distinction between the security and the contract in most cases. As at contract with B. and sell him a horse for 20L for cash B. gives his note. The note is the security and no action can be maintained on contract, because it has a note which is a security of a higher nature. But the contract and security are in same instance and if some thing they are synonymous terms as where the contract is only an undertaking to do a thing or not in the same term in which the contract is made by the party. The writing in this case is only evidence of

Not the contract and is no higher security than the party had before the writing, and in respect to the writing, an action may be brought upon the first contract and the writing given in evidence. But to be claiming upon the first contract cannot be taken note to set up a contract different from the writing, for the writing is evidence of the contract, and cannot be contradicted by oral testimony. When the contract is merged by a promisor, a higher note and no security has some defect in it, by which it is rendered ineffectual. The contract re-issues, and an action may be supported upon it, as if there had never been any security of a higher nature given. As where an original note is used, as necessary to the case, and an action may be supported on the original contract as the receipt, see the principle in *Buss. 1077*. It has been determined by the courts that if the original note is lost, it may be entirely neglected and an action brought immediately on the contract.

1840

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10 1847
Trust and the parties are
to the same.
Judicial sales. Since a court may de-
clare a property to be public, and therefore
the sale of it to be public and
therefore that it is a public sale within the state
in chief of the state. See 21 G. Blac. 47
Simons vs. the party admits the contract &
wherever the party admits this, then the
case is a part of the state law. 138 5th
upon which the party admits the contract &
has confessed the agreement. See 138 5th

Lecture II 6 January 1847
In a case in the second of May 229. It appears
that the testimony, in cases circumstances
like that, will be admitted to vary the opinion
of a written contract. But the principle upon
which the party testimony was in that
case entered a deed was to free the uncon-
sidered of the Chancellor's interference and
to effect a specific execution of the contract.

There is one species of partial contract. It is
one that is not entered into execution and is
not yet well settled. Which is the
case of many a settlement. It is a contract

by said to give B. 400 if he will marry his daughter B. marries her yet A is not bound by the contract. for this is directly in face of the 3d Rule. and if such contracts were enforced would defeat the 1st. I have made this an exception to the general rule of 1st contracts, see with & in one part will be enforced, but there is not a rule say Mr. Justice. the one rule is "no man shall take any other advantage of this statute, than what arises from the non performance of this c. I can not say another statute shall not be employed so as to defeat a man in something as in the case of ^{the} 1st. St. Lease. where the lease was to have the use of a farm if he would build a barn he built the lessor refused to give him a lease. Here the lessor was about to make use of the 1st. of hands to commit a fraud on a marriage settlement 1. 1 Vern 618

Whether an agreement that an agreement shall be put in writing shall be in aid of a question about which there are contradictory authorities 1 Vern 171 157

2 Chancey cases 1. 5. 5 cases 47

Contract Stock Fund

74

a sum, in consequence of this the young man marries. the father is haughty to perform the condition of the letter.

If the young man married before he saw
the letter, the father is not bound by the letter.

2 V. n. 361

20 June 65.

2 Ventrals. 361 2 April 6th. of Mod 3
but the last case has no relation to the
statute of fraud.

Lecture 4th January 1874

The consideration of contract

As a general rule every contract is valid but
excepted are some consideration there
may be some rule of Law which will prevent
evidence being admitted to show that there was
no consideration. but where this is not the
case evidence may be introduced to show
that there was no consideration & if so that there
was no consideration

was not a valuable relic
of the old kind given for no reason. I do
not suppose, as you received evidence
of the interest to which that relic was
connected. as no part of the money shall
be made & every the operation of writing
on the stone is either valuable as a ma-
terial - ^{man's eye} - and as an affectation as a ma-
terial. The first makes the contrary and
second of all the more. But where the can

§ 5 Consideration in Contracts
contract is founded only on a good
consideration the only good reason the
law and creditors are not affected by it
contract
Where the contract is founded on a good
consideration in the contract is necessary,
and not executed no action can be maintained
when a contract is promissory
where a party has an offer to promise to make
a gift for his son and then refuse to make
it is maintainable for such promise
Wherever there has been any advantage to
the promisor or any disadvantage to the
promisee or prejudice to the promisee, it is
a sufficient consideration. But the amount
of a little value is enough
the consideration is. In Law the ad id
will be a good ground for an action in
law to set aside the contract. And the
reason is of human nature that if a man promises
liberally he is bound by his promise. No there
is no consideration. Inside a he got - an
L. Hanes.

If the contract is reduced to writing and the title
detailed at large, this does not alter it, for a
written contract, as it effects the completion
and indeed ~~the~~ it barely being a deed to an
thing, does never alter it. Here it is sufficient
the written contract is a valid ground
for no evidence will be admitted to prove

that CONTRACTS. Consideration 176
that there was no consideration not im-
ply because he has acknowledged the con-
sideration for if that was the principle a
hard acknowledgment would be as if he had
a written. But the principle is that no
hard evidence of all he admitted to vary
the ^{off} creation of averting. this rule is founded
in ^{off} policy, and altho it may in particular in-
stances work insufficiency, yet it is a ^{off} settled rule
of contract.

A. sues B. who promises him a reward if
he will stay his suit. A. for, because it is a re-
sufficient consideration to entitle him to an
action on the promise of B. Bro. Eliy 287
Rayl. 376. . . engages to forbear a ^{off}
while, or for same time. in consequence
of which B. promises. this is not a sufficient
consideration for the promise. Pl 23
1 Sid 47. . . is an infant. promise in such
a case there are contradictory authorities, Bro
Ely 126. 700. . . Pl 18

Where the original contract was void in them-
selves, forbearance is a good consideration
in a consideration there 24

The promise was void in law having
the original contract yet if there was a
moral obligation, and a promise for a benefit
is a sufficient promise in binding a ^{off}
in sufficient. of donation. . . There the first
+ limitations has run upon and the first
there is a ^{off} moral obligation
to pay. . . the first obligation

179 Consideration

The original promise considered not merely a promise to pay but an obligation in conscience. The husband wife domestic case, the quies entered into a contract and after marriage the promise to pay of the husband is binding there the original liability was solely on his side and not by the contract of the parties. If that is the case and for the reason of the original promises to pay this is not binding on the wife. Consideration where the husband after the wife is dead promises to pay her debts, not liable. (Colby 27 1843) Contracts must be mutual, partly by the terms of the contract, at the one is bound and the other not neither are bound. 2 Hbl. 310

If right an executory consideration. original promise made, founded on such a consideration could not be enforced. If the act was done at the request of the promisee it was always paid and he was bound by his promise. 12 Colby 18 2nd 13

By the modern authorities of the last century consideration is beneficial to the promisee, it is a sufficient consideration. As where a man repairs a house for another without request yet if the other afterwards promises to pay him he is bound by that promise. It is a sufficient consideration. Part of it is. It is beneficial to the promisee as it has been by law

Contracts. Consideration 178

Plature H⁷ January 12th 1794
1st If a contract is on the face of it void.
And there is no consideration, can we
or sustain an action

2nd Assume this is a void contract but
and detailing it at length, it is not the
better

3rd If the terms of the contract do not
import a consideration, yet if in such
case there was a value in the goods in
exchange, whether the contract was
in writing or not. Or in such case, the
action may be brought upon the pa-
ral contract, and the writing given in
evidence, to show the contract a. p. p. m.
which is only part of the proof is required
the consideration is the other part, which
may be proved from the writing, if it is
detailed in the writing, if not, it is a p. p. m.
may be let in. The words, for value received,
though in place, were omitted in the
p. p. m. In an action, an action for the
goods, the declaration stated it was for a
valuable consideration, and an action
could not be proved by proof to establish the con-
sideration.

179 Considerations Contracts

McKeene supposes that in every case where the written contract is not specific, but the contract and consideration detailed at length, the consideration may be enquired into, and the action in such case, may at all times be ~~maintained~~ brought upon the parol contract and the writing given in evidence, for by reducing the contract to writing does not make it a security of a higher nature.

As sealing the written contract gives it more great efficacy than it before had, for this act alone does not make the contract specific. There are ^{acknowledged} those contracts where the consideration is ^{acknowledged} cancelled, and does not appear upon the face of the contract, as far value receives, here the consideration is acknowledged, but not detailed. It has already been observed that sealing a written contract detailed at length, without a consideration is not the better for sealing. So too if the sealing instrument ^{acknowledges} acknowledges a consideration and states it at length and being thus stated, it appears to be no consideration, the contract is void. As thus rendering the sealing and acknowledged good. If the party

Contrasts Considerations 180

As for instance, the writing acknowledges, a consideration ~~that~~ and states it to be a forbearance for a little while. Which the Law ~~acknowledges~~ considers as ~~no~~ consideration. Its being acknowledged and in writing does not render the writing any more efficacious.

Bonds notes &c covenants which are made instruments, bind without taking into the consideration, because it cannot be done. It is already acknowledged, and nothing in the writing to contradict this idea, and this acknowledgement shall be contradicted by no evidence of a lower nature than the instrument itself. As to bonds with conditions, those conditions always disclose the consideration, and if the consideration ^{is} disclosed is an idle one, ^{the} ~~the~~ ^{the} bond is void. But Quere. Does the condition in fact either disclose or furnish evidence of a consideration. A gives a bond in common form for 400 L conditioned to be void upon his paying 200 L or say 400 L. It is an evidence arises the conclusive evidence of indebtedness. Is there any fuller evidence of the consideration, arising from the the condition than if no such condition had been annexed? The allegations ^{made} in the body of the bond, furnish

the land prop. is a tall event, and between the parties whatever may be the consideration. If it was intended as a gift the land prop. is the grantee. Who indeed the Law will raise a trust if there be no consideration, and will consider the circumstances of the affair as proof of the nature of it, notwithstanding the terms of the grant. But an executory promise to give a grant in good faith, is an act of no binding force. Has then is it that covenants sealed for the same thing may be enforced. In fact an action ~~cannot~~ be brought up on such covenant will be supported, but the damages are merely nominal, and may in substance be as bad as non as the no action lay at all, and why an action is supported is perhaps owing to whim. Chance is will not decree an action of such a covenant, and why? on the ground that they will give an instrument no more efficacy than it has at Law. The doctrine of covenants then ~~and~~ is very smileable with the Occurs idea. The consideration of a bond may be engaged into in Chancery, and if it appears to be given for a voluntary consideration, it will be postponed to all other claims of creditors, so that it will rank below

183 Contracts Consideration

Legacies The consideration of a deed detailed of length may be enquired into as far as it regards a recovery of the money by action. It furnishes not complete evidence of a receipt, but as it respects the title of the land it is incontrovertible or rather it may be unnecessary to make the enquiry for a legal title would vest, tho there was no consideration. But the law would raise a trust and chancery jurisdiction would compel a reconveyance on request. Sufficient in case of a voluntary conveyance a valuable consideration is acknowledged. Creditors are supposed to go into an enquiry relative to the consideration and shew that it was fraudulent conveyance. The grantor may go into the same enquiry to shew that it was a trust case. *McRume (Doubtful)*

Lecture 48th January 16th 1795

The lesser contract or security is always merged in a greater, as a note of hand given for a bond debt. no action can ever after be sustained upon the bond debt. A man promises to pay his note: no action can be sustained upon that note promise because there is no ~~any~~ consideration.

an which to ground that promise, other than that on which the note is founded and a that is a security of a higher nature than any first contract. an action can not be supported upon the first promise. But if there is any new consideration on which to ground the promise to pay the note, an action will be sustained upon that promise. As when A. promises to pay his note to B. if he will show it to him. B. shows it. here is a new consideration (see) B. to enable, and an action will be sustained upon B. promise. Cro Jac 498. Moor 340. Cro Car 343 Cro Eliz 240-67

Another person besides the promisee may have an action upon the promise where the 3rd person has the interest in the promise. It is said that such third person must be a near relation. But Mr. Keene thinks that circumstance immaterial. If the promisee is only a trustee to such third person and is obliged to pay the money when he receives it immediately over to the 3rd person. then the third person may support an action upon the promise. 1 Vent 318. 332. 12d 3; Dutton & Paul

18+ Contracts Consideration

Money delivered to B. for C. may bind
the action for this money, not on the ground
of being C.'s debt, nor on the ground
of B. being a servant, but on the promise
of B. to deliver it to C. 20. 1. 22. 1. 22. 1. 22. 1.
Perhaps it may be inferred from *Hemil* that
according to the principles of the law
notes of hand are negotiable

But creates a contract so as to put it in
the power of the party, to make it binding
there must be a contract, understanding
between the parties. A says to B. will
you sell your horse? B. says I will for 20.
A says I will give it. nothing more is ne-
cessary to make this bargain binding.
Then a tender is made of the parties. It is
at the election of either of the parties to
the bargain that a tender of the money by A.
or tender of the horse by B. Upon the tender
the property of the horse vests in A. and the
right to the money in B. If A. does not
tender, he gives a discharge to the party who
tendered, so that B. only remains bound to
deliver the horse. A. may sue on the
contract for the horse, being in action, for
the 20. and take the horse without
leave from B. or dispute in the contract
and bargain. A. may also sue for the money
and horse.

Contracts

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Let us suppose one of the parties to a contract to perform first, & the other to pay & keep, and by detaining him in haste, he runs down his obligation till the latter is reduced to nothing.

The first party enters into an engagement the one to make into a deed of his farm on a particular day, or rather to stop it when the day arrives, and does not appear that either is to be done first, either the obligation of the parties to perform is equal, or the one of them is the other of the money.

A promise in consideration of a promise, in which case each promise is the consideration of the other promise. As when one considers an other promise to be done by 3. & the other to give him 200 an inch a day, he is no nearer any of a tender or another of the parties.

But when one performs both are entitled to their respective actions. For the neglecting to perform the contract may be of greater disadvantage to one of the parties than the other. In the declaration it is not necessary to state a tender or performance in letters. But 1. Inst. 147. 214. 46/120 not 85. Dec. 293. See also in the 1st. quotation.

It is no new law, but a confirmation of the law, when the case of the contract is a new one, it is in such a way, there is one effect.

187 Contracts

by way of another set of circumstances
H. & J. But if an act is in fact
an abuse of the power of the ap-
pointment and that is sufficient no
shall be merged. 1040

A voluntary conveyance covenant car-
ried into execution in chancery where
the covenant was to do a marriage
act as to settle an estate upon children
20ppm 176

Lecture 19th January 1795

It is immaterial how many securities a man
has for the same debt if these securities are
of the same rank. the one is not merged in the
other, and they all stand good against the obligor.
It is true a lower security is merged in a high-
er, but this is not upon the idea of there being
a double security. but it is because the higher
security is a higher evidence of the debt, and
speaks conclusively against all lower evidence.
H. holds a bond against B. B. gives an-
other bond for the same sum and purpose.

A may bring his action upon either or both
at the same time but payment of one is satis-
faction of both. But if there is any alteration
in the new bond as another party's subscription
as obligee, it merges the old bond. Co. Jac. 576.
Co. Ely. 817

There is a remarkable rule that where a man has more remedies than one he may pursue them all at the same time, and let the act as many times as he has, remedy, but a satisfaction of one is a satisfaction of all, except the cost when the several suits, which must be aided by the debt. By dr bills of exchange.

Where two men give a bill and ~~both~~ are joint obligors payment by one discharges the other, and if the 1st fails of getting his money out of one he may pursue and recover it out of the other. But with regard to costs it is different.

If one of the joint obligors lies out of the note a service upon ^{the} one who lies in the note is sufficient notice to the one who lies out and he can may be taken out and levied upon the one who lies out of the note, whenever he happens to come into the note. But the 1st has given him a right to an audit and a release when this he may recover costs and damages, as the case may be.

A specialty cannot be discharged by payment, or satisfaction even if the obligee is willing to make full payment. This will not be admitted, yet this will not discharge the specialty. But if the obligee arise subsequent to the ~~payment~~ specialty it may be discharged by ~~payment~~ ^{payment} of the debt. 99 Palmer 110

If a covenant is entered into to do a thing which afterwards is forbidden by the law, yet the law does not prohibit it entirely. Equity will decree as much as may be done consistently with the law. See *First Bishop's case* of 1499.

3. *Bray v. Perkins* Case 389

If the rule of damage, that is, which the parties agreed upon to the time of the contract is the rule of damage in England they are liable for detention, and this is the interest of the time after which the contract was to have been performed. In this case the contract was given as a condition, which perhaps is the reason why an attestation by us from the King's Law is not for the better. This with us one year furnishes the temptation for an innocent breach of their contract. Where A. has engaged to build a house for B. and the rule of damages is not fixed by the parties, here the damages are entire by presumption and are determined by the triers.

A. engages to deliver an article to B. by the first of March, and not for instance, which he does not deliver, the rule of damages is the price of the article of the first of March.

several writings made at the same time with reference to the same thing, are considered as one instrument. It is where it is designed to get more than legal interest for money loaned to B. To be one note

1201
 mortgage loaned to B. takes one note
 of 1201 with legal interest and a separate
 note of 101. these notes would be construed
 as one instrument, and being usurious
 would be void. So if a man gives an absolute
 deed of his farm, and at the same time
 takes a writing from the grantee, that if
 the grantor ~~will~~ pay to the grantee,
 by the 1st March, these writings are but
 one instrument and are together a mortgage
 if he had contained a condition to come
 and in equity amounts to an agreement
 and will be executed as much as a cove-
 nant to do 2 Nov 373

ant to the court of equity when they can discover the
ideas of the parties, will construe that to be an
agreement, as the case of Att. Gen. v. Tao a
band from the husband to his intended wife
to settle 1000 £ upon her at his death. The
law this bond was merged at the marriage
and equity will enforce the agreement att. Gen. v. Tao
2 May 371

where A and B. give a joint bond of 100 L
to have the whole, in order to compel it to be
to him 50 L he must apply in Chancery. in Eng
the same is effected, in this state, by a writ of
Law. Abusing, for this purpose a writ of com-
pulsion and called

Bonds are not assignable at Law. so as to
enable the assignee to sue in his own name
But a Court of Equity so effectually intervenes in the as-
signment as that in fact it renders them negotia-
ble L. Ray 683. And our courts say
that if the assignee will give the obligor notice
that he has got his bond for a valuable consid-
eration, the obligor shall be compelled to pay the
contents to the assignee, and if notice
given, the obligor pays it to the assignee and
gets his receipt in full, that shall not excul-
cate him, from his liability to the 1st assignee

Lecture 30th January

Is the power of a Court of Chancery over con-
tracts, and what of their power to rescind contracts
if a Court of Chancery may rescind or relieve against
any contract whether real or personal

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Power of a Court of Chancery. Contracts.

When this court relieve ^{as} ~~as~~ contracts, they do it in term that is so as to do strict equity between the parties is where in case of a ^{unconscionable} contract they are applied to, they will never rescind the contract entirely, but only to the extent of the injustice about to be committed, and they will give to the lender his principal and legal interest. ^{in equity} A court of chancery will interfere and grant relief in many cases where the injured party has a remedy at Law. The cases which are the peculiar province of a court of Chancery are those, viz. which against the contracts of Penalties, and so forth, which a court Law will not do, for say they no man shall be allowed to wrong himself. Where Drunkenness is the cause of a crime. Where weakness of understanding, and ignorance of a persons rights are the causes. Fraudulent contracts, where the fraud is in the consideration. Where the fraud is practised upon a third person. Where the contract is entered into under the influence of fear, occasioned by an unlawful cause. Where the fear is against a parent's interest.

17th Principles of a Court of Chancery Contracts
Marriage Prize Contract Contract
with young men for their subsistence
Contracts entered into by taking advantage
of a necessities most situation under
favorable contracts called for fraudulent, the one
kind of which is great inequality of price
and made under circumstances of unjust
and harsh.

For Chancery will relieve where the con-
tract is void at Law even if a fraudulent
contract is illegal, where the proof of their
legality depends upon per & testimony
and the Statute is determined - So to enforce
the contract till the witnesses of his pain
are dead, the true testimony may
be perjured, but it may be important
to have them in Court to the trial. In
such case Chancery will interfere, and
set aside the contract which at Law would
have been void. Brown v. A. for the
same reason they will interfere where
the contract was obtained by fraud in the
execution - as by duress.

Power of a court of Chancery Contracts

It is generally the case that courts of Chancery will not interfere in an action where a legal remedy can be obtained in a court of Law. The manner in which they enforce its decrees is by setting aside the writs ^{that} they wish to compel to do some act, and injunction, to ~~compel~~ prohibit their doing a court of Chancery acts as well in rem as in personam.

There has been a breach of covenant the ground upon which Chancery interposes is to carry the agreement of the parties the especially into execution and application is never made ⁱⁿ Chancery, to recover damages.

It belongs to a court of Law to give damages. So that in case of breach of covenant, the object of the parties in applying to a court of Chancery is entirely different, from what they have in view when they bring an action at Law which is in the last, only to recover damages.

The Power of a court of Chancery in enforcing contracts. As a general rule, Chancery will not interfere to ~~enforce~~ enforce

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an execution and a contract, unless the contract relates to real property. In case of personal contracts the parties are left to their remedy at Law the recover damages. 30th 38th 39th rule there are exceptions. This court carries the contract specifically in execution according to the intention of the parties. Where the contract relates to land either the vendee, as vendee may make the application.

A second rule is that in all cases where damages, in Law, are recoverable for non performance, a Chancellor will execute it specifically. Where no recovery can be had at Law, there being an affirmative bar, a Chancellor will not interfere, as here at Law the action is barred by the Statute of Limitations. Thus far there appears no contradiction between the decisions of a court of Law and Equity. As the object of the parties in stipulating to each an entirely different, the one being to compel the parties to fulfil their agreement the other to punish the party for his breach of contract. but compelling him to pay damages.

30 Brown 124 Henry H & A

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Prerogative of a Court of Chancery. (Contracts)
The Court of Chancery will not decree a
specific performance, where damages will
be given in Law. As in case of voluntary con-
tracts sealed. For a breach of such covenant or
contract damages are recoverable in Law.
Upon the same principle. That a Court of Law
will give only nominal damages, & a Court
of Equity will decree a specific performance
where no damages can be recovered in Law an
account of some injury about the con-
tract, as to the injury. Where two wit-
nesses of fact ^{are} memory are required, and one
of them is a lunatic, yet a Court of Chancery
will decree a specific performance not-
withstanding this defect in fact.

In some cases the interposition of the Court of
Chancery in their decisions are opposed to
the principles of Law, as their granting the
rights of redemption after the Law day is
out in mortgages. And their carrying the
contracts of the husband with his intended wife
into execution notwithstanding the principle
that all contracts, before a man and a
woman are merged by their marriage.

137 Power of a court of Chancery. (Contract)
and where an infant has not an agent, so
the purpose of legislation in respect to
the infant is important by law he cannot be com-
pelled to pay back the money but a court of
Chancery will compel him.

Contract between man and wife to live
separate and never recognized the court
of Chancery. A court of law now will
in case of a wife's husband is not to be paid
by her, a court of law, in an any point on
that he may interfere, but a court of equity
will compel him to pay a sum such as that
in a case in 3 Brown where the
wife retained the money which the husband
agreed to pay her annually.

2 Puffm 244 2 Puffm 343

Settlements of a man's estate in a will, limiting
upon the wife of the husband and then about
the husband's children made for the
support of the children. It will be executed
in Chancery if there is a tax and not affected
by it. It will be executed with a will and
the executor is to pay it to the widow 92
The will will be ~~executed~~ executed
in Chancery if there is a tax, for the reason
that the will is not a will to be done

filed a copy here, and the court was
 coming from this man recalled with it. as
 where it relates to the land 1000. who is unincorporated
 himself of the and the other hundred for the
 by the same. 1840 M/ 147 2. 1847 13
 Do send a bill that will be executed in Chan-
 cery. There is no contract but what a court of
 equity may be possibly execute. They may
 be shut up and if the parties agree to it. & where
 the filer his bill in Chancery against B. and
 B. answers to it with an objection to the bill
 Chancery. They court will hear it.
 The subject says, the D. ft. files a bill Chan-
 cery to be relieved against the obligation and
 account of fraud. The D. ft. files his bill with
 the answer his just deels. the same is then
 in the Chancery the court of Chancery, and they
 may proceed with it, standing any
 objection the D. ft. may have to any equity
 farther than it relates to the fraud.

Where by any means whatever too much has
 gotten into the contract, it is a good ground for
 an objection in Chancery.

Distribution according to the Statute of Charles and c.
 After paying debts & the widow takes one third. The Statute directs that the estate shall be divided among all the children and their legal representatives, &c. Under this clause it has been determined that so long as there are any lineal descendants of the intestate, they take the whole estate exclusively. 2. In the want of such ~~relations~~ ^{representatives}, the personal estate goes to the next of kin and their legal representatives. 3. Representation among collaterals is ^{not} to be extended beyond brothers and sisters children.

It has been determined that representation is in the descending line is not assumed shall. Representation takes place only when some of the nearest stock are dead, leaving issue and others are living. The next of kin are to be ascertained by Comparisons by the civil Law. If there is no issue of the intestate the wife wife takes one moiety the husband takes one moiety, the mother with the brothers & sisters. but if there are no brothers & sisters she stands in the first degree.

Distribution of an Estate 210

Distribute the personal estate of J. J. who is dead leaving his wife Patty Stiles and three children A. B. & C. — The wife takes one third, and the children the other two thirds share & share alike.

And the same case only A is dead leaving children D & E. — They take by representation the what their father would have taken.

B is also dead leaving F. The same distribution as in the two former cases, except that F takes by representation the share of B.

H. is now dead leaving J. D. & — Patty Stiles takes one ^{third} of the estate, as in the first case. The grand children the other two thirds share & share alike.

J. D. is also dead leaving J. — J. takes by representation the share of J. D.

C. D. E. F. G. H. & I are all dead. D left one

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child. E. two. F. three. G. four. H. five
and I six children. The old stock all
being dead. The great grandchildren, no
longer take by representation, but
share and share alike

7. J. S. is dead without issue. his father
H. and mother L. his grandfather M. &
grandmother N. his uncle O & aunt
P. his uncles son Q. and aunts son R.
his brother S. and sister T. and his nephews
V. W. & X. V & W the children of S. and T.
the child of T. and X. and Y. the children
of R. and Q. the child of W. are living—
The father, as nearest of kin takes the
whole of the estate.

8. His father H. is dead. The mother being
by statute degraded from the first to the
second degree. will take equally with S.
The brother ~~and~~ T. the sister ^{and M. & X. share equally} ~~share equally~~

9. His mother L. is dead. The grandparents
M. & N. and the brothers S. & sister T. take equally

10. His grandfather M. is dead—his grandmother
N. and his brethren S. and T. take equally

11. His brother P. is dead. — His grandmother X. and sister T. take a share each a third. and V. and W. the children of P. take by representation the other third

12. His brother S. and sister T. are dead. The grandmother X. takes the whole

13. His grandmother X. is dead — O. the uncle. P. the aunt and the nephews V. W. and W. take equally

14. His uncle O. is dead. P. V. W. & W. take equally

15. His aunt P. is dead. The nephews V. W. & W. take the estate equally

16. His uncles son Q. is dead. As he would have had no share had he been living. his death does not affect the distribution

17. His aunt's son R. is dead. The estate is divided as in the 1st case. among the nephews equally

18. V. his nephew is dead. The estate is divided equally between W. & W. representation among collaterals being admitted no farther than brothers and sisters children

19. V. W. & W. are dead. The estate will be divided equally between their children. X. Y. and Z

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20. Nobody is alive, but her mother L. and
her sister S. and sister P. — They take equally.
21. If his mother L. and his nephews V. & C.
and if they are living, the mother is preferred
to her natural place in the first degree, and
excludes the nephews ~~and the nephews take~~
~~no share of the estate~~
their parents

Lecture

February 10th 1795

Lecture has been interrupted a few
nights, on account of the superior Court

Connecticut Statute of Distribution
The distribution in the descending line
in no respect differs from the distribu-
tion of personal estate under the
statute of Car. 2nd. and it comprehends
real as well as personal estate of every
description.

Among collateral the distribution
is different. If the estate come by de-
vised deed of gift, or descent, it shall never
go to any collateral kinsman. Who is

Distribution (an stat. 244)

not of the blood of the ancestor from whom such estate came. The personal property of every description, as the real property of his own acquisition.

Among collaterals brother and sister take, &c. The words of the statute are 'the next of kin to and of the blood of the ancestor &c.' But the words should stand thus. 'the next of kin to their estate ~~to the~~ of the blood of the ancestor &c.' This is the universal construction. according to the words of the statute there is a tautology for of the blood, the statute means of kin as related to. it would then stand thus the next of kin, ^{to the ancestor} related to the ancestor. To save the statute, and avoid the tautology, it may be said that ~~of the blood~~, means lineal descendants. but this is contrary to all ideas of the statute true construction of the statute. for by this construction the Under, and all who are

not lineally descended from the father. The intestate would in no case be excluded, and the estate must go to him, unless there are such lineal descendants, but this could never ^{have} been intended by the Legislature.

The estate that did not come by descent, but which was acquired by the intestate himself, is to be distributed first among the brothers and sisters of the whole blood and their legal representatives, (by representatives meaning the same as in the P. D. C. (as and) Next, to the brothers and sisters of the whole blood and their legal representatives, (by representatives meaning the same as in the P. D. C. (as and) Next, to the brothers and sisters of the half blood and their legal representatives. The words "legal representatives," should stand in the order in which they are here placed, not as they stand in the statute. The next of kin and their legal representatives, ^{as by this order} are of principle of the statute is destroyed, which is that representation only extends to brothers and sisters

Distribution

children as in the statute of Car and the wards, legal representatives, in the statute of Charles having received this construction previous to our statutes being made, we must must suppose that our legislature using those words in a similar case adopted the construction previously given. —

If the estate comes by deed of gift from one who is not of kin to the grantee intestate, it is considered as purchased estate.

If a father has given an estate to a son and the son dies, the father can never take the estate by our statute, for he is not the next of kin to the intestate. In the blood of the ancestor he for he is the ancestor and cannot be said to be of his own blood, and if there are no other relation than the father, the estate must escheat. It is certain the legislature did not contemplate such a case.

the father has not a drop of his son's blood in his veins. Ground

27 Distribution of property to issue of John

John Stiles is dead without issue. He
 had seized of B. acre which came to him
 by descent, or devise or gift from
 his father, Preuben. — And of the acre
 which he purchased with his own money
 and 100 L in personal estate. He left
 a brother Sam Stiles of the half blood
 and Sam & Sally Stiles brother and sister
 of the whole blood, and John and Susan
 Maule brother and sister of the half
 blood and Mary Stiles his mother. His
 tribute B. acre white acre and the per-
 sonal estate.

Anno. Sam, Sam. & Sally take B. acre.
 and Sam & Sally, of the whole blood, take
 white acre and the personal estate.

And the same case only Sam & Sally
 are dead without issue. ^{John} Sam. takes the
 whole of B. acre. and Mary the mother
 takes Waite and the personal estate. ~~in~~
 the personal estate will always grow with
 Waite, as the real estate of the intestate and
 his issue.

If the black, means linearly descended
 Answer. Upon the first supposition. George
 will take B. acre, and upon the second
 it will escheat. John and Susan have
 take per capita, white acre.

8th Same case but George Stiles is dead
 and I am left A. and Sally B. & C. - Distri-
 bute B. acre upon the Hypothesis that A.
 B. & C. take as next of kin - also upon
 the Hypothesis that they take by represen-
 tation. Distribute B. acre as if repre-
 sentation was at an end with A. B.
 & C. - also as if it extended

Answer. Upon the first Hypothesis A. B. & C.
 take black acre per capita. - See and A.
 takes per stirpes and moiety & B. & C. the
 other. - Again if representation was at
 an end with A. B. & C. ^{John & Susan have} they would take
 white acre per capita. if it extends they
 take per stirpes, A. one moiety. B. & C. the
 other

9th The same case only George
 Stiles is living. Distribute B. acre
 as in A. B. & C. take by representation
 Answer. A. takes per stirpes and moiety. B. & C. the other

2nd ^{disjunct} is of B & C take as being next of kin
Ansu. B & C together with George take
per capita

3rd as if they take as next of kin and of the
Orlando means lineally descended. Ansu. #38C
take per capita. A & C as if of kin, relates
not to J. L. the intestate but to the children
Ansu. George takes B & C ^{with B & C} being in the
second degree from the children. whereas the
nephews A & C are in the 3rd degree

10th George is dead and B. is dead leav-
ing D. & E. ally Hiles is living. Insensitively
takes ^{the whole} ~~one moiety~~ D & E. next of kin the other

12th Lally is dead leaving B. and C. Distri-
bute where upon the supposition that
her children take as next of kin - affo-
ly representation. Ansu. B. & C take
the whole. In the first case John & Susan Rame
take as nearest of kin than B & C

13 B is dead leaving F. and C is dead leav-
ing G. H. Ansu. D. E. & G. H. take per capita. each
acre and John and Susan Rame take
the whole

14 John Rame is dead leaving issue

Distribute white acre upon the part
ing of the wards "Legal representatives,"
and those who legally represent them,
being misplaced in the statute. Their
proper place being immediately after
brothers and sisters of the half blood of the
intestate. Also distribute, as the wards
stand in the statute.

Ans. B. acre as before. Upon the first
supposition Susan Crave takes one
^{1/4} Waere and I ~~take~~ take the other per
stripes. according to the second sup-
position. Susan takes the ^{1/4} B. & W.
acre

14. Susan is also dead leaving H. & L

J. R. & L. take Waere per capita. B. acre
as before

16. The Wiles are extinct. black acre speaks
Waere as before

17. I is dead leaving M. distribute Waere
upon the ground that Legal representatives
are misplaced. and also that they are
not legally placed. If others were concerned.

The provisions of the Statute that representation shall not extend beyond the third and fourth children, I paint it out. Upon the first supposition H. & L. will take what are per capita, being next of kin. But upon the second supposition, M. will take and so will L. which is directly contrary to a clause in the statute which says that Xeroph. relatives are to be admitted in any collateral, after brothers and sister children.

18. H. & L are dead. R. left N. & O. L. & T. & V.
Do E. & Y. H are also living distant to both
estates.
Answer: D & Y. & H take B. are per capita
they being the only relation of the blood of
Baker. They also take A. inter se, being
preferred by the statute to those who are of
equal degree but of the half blood, as are
M. & C. & G.

10th George Stiles, I think is also
living. Distribute B. acre as if George
was of the blood of Penhew, and as if he
was not. Answ. If he is of the blood of Penhew,
he will take B. acre in exclusion of D & C
If he is not D & C will take. But George takes, where

20 Solomon Hill, the grandfather of John is living and we will now suppose that of the blood means of him. Answ. Solomon takes both black and white are

21. Solomon is dead but Humphry the great grandfather is living. Distribute B as if he is of the blood of Brecken from whom it came, and as if he was not. all distribute W. are Answ. Humphry ^{& George per capita} take both black and white are

22 Humphry & George are dead. George left a son L. Distribute as if L was of the blood of Brecken and as if he was not Answ. In the supposition L. D & G take per capita all being in equal degrees. Upon the second L is excluded.

23. The only relations alive on the part of the Hills are L and his uncle Edward Hill. Distribute as if L and Edward were of the blood of Brecken and as if they were not. Answ. Upon the first supposition, L and Edward take per capita upon the second B are exerts. ^{as to L & E are now} ~~between L & Edward and L & G~~ ^{excluded}

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24th Edward is dead leaving a child R
This and the following case. distribute upon
the ~~children~~ that E and R. are of the blood
of Breuken

Ans. E. and R. take both black and
white acre

25th E & F G. & H are also so alive. and so
is I the grand child of Lam Ans. They
all being in an equal degree of proximity
to take B. acre per capita. But I being
of the half blood is excluded from any
share in W. acre

26th The following cases refer only to
B. acre. Lam and Sally are living, but
the estate did not come from Breuken
but by deed of gift and devise from George
Hile. Distribute as if of the blood meant
of him. and as if it was taken in its feudal
sense. Ans. Upon the first supposition
Lam and Sally take B acre per capita
Upon the second supposition R take
it.

27th Breuken is living But Lam Lam &
Sally are dead Ans. If the blood means

Of her Brethren will take

28 The estate came by deed of gift
as devise from Moses Lamb no way re-
lated to John Stiles. If Brethren take, claim
at the same time. Answer. Such estate is
considered as purchased by the intestate
for the clause which would seem to cut off
Brethren applies only to an estate coming from
some ancestor as kindred as appears by
the statute.

29 In the case last put Brethren, Mary
John Brawe and Susan are alive. Answ.
The Parents take the estate

30. Baire came from Brethren by deed
of gift and no relation of J. S. is living but
Brethren for such a case there is no provisi-
on in our statute and the estate would es-
cheat because Brethren is not a legal title
and said in the statute.

Lecture 62 Feb. 11th 1791

When a man makes use of the term next of kin in his will not only those in equal degree, but their representatives, take a share of the estate 3 Broom 64 have expressed

Legacy. is a bequest of personal property. The English law is adopted in our country. In England certain persons are incapable of taking legacies which is not the case in Connecticut.

No statute of Limitation in respect to legacies.

The article granted in the will does not vest immediately in the legatee upon the death of the testator but it first vests in the Executor and he has the absolute power over the property to dispose of it for the payment of debts. Yet he is accountable to the legatee, in an action, for the full value of the article if there is property sufficient to pay both the debts and legacies. The legatee may call upon the executor for his legacy in a year.

If the Test^r assents the legacy vests immediately in the Legatee. If an horse the legacy consists of an horse, and he is killed within the year the Test^r and not the Legatee is entitled to the action of Treaspass. But this is not the case with any other species of conveyance for by them the property vests immediately which is the case with a devise for there the property vests immediately in the Devisee upon the death of the Devisor, and if a Treaspass is committed upon the land the Devisee is entitled to the action.

If the Test^r is sued for a legacy he may answer plene administravit. This is true is an effectual bar to an action against him. He says there were debts due and he allowed up all the property. But his plea will not protect him against any fault or negligence of which he may have been guilty. And if he has sold the property much below its real value and altho he may not have any faulting of the Testator's property in

his hands, still he is liable to the Legatee for this negligence. For the Legatee to this plea of plene administravit may reply deus est in excusant and plaintiff can be no more barred the property.

Legacies are of two kinds general and specific. Where by the will some particular article is bequeathed and given to the Legatee this is a specific legacy as a particular horse &c. But where a sum of money is given not designating any particular, & so it is a general legacy. The Law as it respects these two kinds of Legacies is different. For the specific legacies rank before the general and are to be first paid so that if the estate of the testator after paying the debts should not be found sufficient to pay all the legacies, the specific will be paid first. If there is not property sufficient to pay the specific legacies, as where three horses are given to three Legates, and one of them is sold for the payment of debts, the other Legatee

must abate a part of their legacies and
 average the legacy between them. ^{and} ~~But~~
 if there should be not enough to pay the
 general legatees after paying the specific
 they must abate in the same manner
 2 Black Com 512. Co Lit III Plm 540
 1 Brown Chan 708

If the specific legacy should be destroyed
 by inevitable accident as if the horse in
 the case just should be killed with lightning
 the gift falls upon the legatee. ^{Plm 540}

Of Lapsed and Verted Legacies

If the legatee die before the testator the
 legacy goes into the residuum and is called a
 lapsed legacy and as to that legacy the testator
 dies intestate.

When the vesting of the legacy depends on
 some contingency which may or may not happen
 if the contingency does not happen the leg-
 acy lapses. as if a legacy is given to a man
 if he marries at the age of twenty years, and
 he does not marry the legacy will lapse
 If the testator gives a legacy to a son the

Paid when the intestate arrives at 21 this is a vested legacy, and if the legatee dies before he arrives at 21 still the legacy must ^{be} paid to his representative for it has already vested and the day of payment is only set forward. But if a legacy is given to be paid if the legatee arrives at 21 this is not a vested legacy, and if the legatee dies before he arrives at twenty one the legacy will lapse. This is a very nice distinction. But so is the Law. When this point there has been no adjudication in the courts and it is uncertain whether the law determines will be kept up. If the legacy is charged upon land to be paid when the legatee arrives at 21. and he dies before that period the legacy will lapse. The above distinction had been established in the ecclesiastical courts who have concurrent jurisdiction with Chancery over wills, for this reason perhaps courts of Chancery have not thought fit to abolish the distinction

Interest is allowed upon a legacy both in England and Connecticut after one year if the legacy is demanded, but no interest is paid until after the demand unless the legatee is a minor.

No interest is paid upon deferred legacies unless the legatee is a minor or unless it is otherwise provided for by the testator in such case interest is paid upon the legacy. 3 Atk 101 10 Brown Chan 82 & 10th 41st Precedent in Chancery 161

The above is a general rule, but not, there are exceptions. If the deferred legacy is charged upon real property which yields profit, the interest is to be paid upon the legacy. If it is charged upon money in the fund, the interest given upon such money, is the interest to be given on the legacy. If the legacy is charged upon land then land interest is to be given upon the legacy and the interest is to be paid from the death of the testator. * 3 P. 227

If the Exr. don't know where the legatee lives and wishes to pay him his legacy &c. &c. for the interest he may deposit it in the court when c. 24. In this rule with Judge of Probate 20th 26-7

Legacy

Lecture 63rd. Thursday 10th 1775

If a legacy is given to a minor child of the Ex^{or} ^{can} not discharge himself by paying it over to the father of the Legatee. For if he pays it over to the father, and he wastes it so that it never comes to the Legatee's hand, the Ex^{or} will have to account with the Legatee when he comes of age. It was formerly held by the court of Chancery that a legacy was a satisfaction of a note or debt, if the legacy was of as great, or greater amount than the debt. But this rule was not relished and every subsequent court made innovations upon it. The first exception taken to the rule, was that the legacy and debt must be of the same generis as the court would not allow it to be a satisfaction of the debt. And if the legacy was not payable at the same time with the debt, it being given as a satisfaction.

3rd the will had this clause that all the
 testators just debts should be first paid
 the legacy was no satisfaction of the debt
 4th if the legacy was given to a natural
 child - no satisfaction of the debt

5th if was required. but some such in-
 section should be required collected from
 the will context.

6th at last I was determined that no
 legacy should be a satisfaction of a debt un-
 less so expressed by the testator in his
 will. Pre. in Can. 138. 236. 240

1st 111- 110. 2nd 616-555

1st 521. 2nd 409 636. 3rd 227

2nd 300. 3rd 96. H. Crown 129

295. 425 389

now in the will are a ^{cumulative} provision
 and when ~~the~~ ^{the} ~~provision~~ we read the
 rule which will apply to one of
 an another above cited. If the provision
 is in the same instrument & in the same
 words. both are not recovered. If
 the provision in a codicil as the
 same point or distinguish, then they are
 both valid and

may be created in real and personal property, and the absolute necessity vests in the ^{personal} man. If a testator should attempt to entail his personal property and else in his will, the proper way for that purpose, altho it and not be an entail in rate; by reason of the nature of the property & Laws of this state; but the Law is such that it would create a life estate in the gift Legatee and the residue property would vest in his heirs. 1st Because the intention of the testator ought to be pursued, and altho his intention cannot be complied with in full, yet it should be carried into execution as far as is consistent with the Law, which admit of a life estate in personal property with remainder in fee (if it may be expressed) to his heirs. as if ^{personal} an estate was by will given to A. for life remainder to his children. the residue property would vest in his children. and why should using the words heirs of his have exclude the fee him from vesting in those heirs any more than if the words children were used, In Case we have a devise of an entailment;

which applies to real property, by which the
~~notion~~ ^{the principle} ~~is~~ by which an entail is made
 to vest in the first issue of the land in tail
 which perhaps may be a further reason why
 personal property thus given, should take the
 same direction.

It is sometimes the case that a testator
 points out the persons to whom he would
 have his estate go, and leaves the particu-
 lar distribution to the discretion of his
 Executor. If this Exr abuses the trust reposed
 in him, a court of Chancery will inter-
 pose and cause a proper execution of the
 Trust.

If a testator makes a devise to a man's
 children, the devise extends only to those in
 esse at the time of making the devise,
 but if at that time there are none in of-
 se it extends to all that shall ever after be
 born. ^{but} Where the devise is to his own fam-
 ily and those who he is bound to sup-
 port, it is said by some of the authorities
 that the devise extends not only to those
 in esse, but to those who shall after be born.

Grandchildren may take the estate called by the name of children. in the devise, if it is apparent that that was the intention of the testator. as an estate given to a man's children, when he had none but grandchildren living

To find out what persons are to be understood by the term nearest relations in a will see Pre in Chan. 401. 11 Rep. 115

Where a man by his will gives all his personal property to another, not only that of which he was possessed at the time of making the will, but also ^{all} that of which he dies seized passes by the will 10 W. 424 - 597. So likewise all the personal property in such a place - whatever he has in that place at the time of his death passes by the will. But this is not the case with respect to real property. But if it is a specific legacy as a certain house, and that house dies and a similar one is afterwards purchased by the testator it does not pass by the devise.

But if a man gives all his corn for instance in such a bin, whatever corn there is in that bin at the time of his death passes

If a man in his will gives all his horses, carriages and other things in a certain place it has been determined that money does not pass by such a will.

If a man makes a specific legacy, and afterwards is compelled to sell it, the Exor shall make up to the legatee the value of the article but if he makes a voluntary sale of the article, from whence it appears that he did not design the legatee should have the legacy it is an ademption of the legacy.

Where a legacy is given to a man out of a bond, and that bond is afterwards paid to the testator it is no ademption of legacy. But if the testator voluntarily collects the bond it is said to be an ademption.

Where a man has a family to provide for and makes his will giving to each of his children 400 L. and upon the marriage of one gives him 500 L. this is an ademption of the legacy, as if 100 £ is given this is an ademption pro tanto.

The Chancellor will some times let in a not proot to shew the intention of the testator, but this is not where the ambiguity arises from the will itself but from some external circumstance.

June 6th July 18th 1795

Dantio causa mortis, is a gift or conveyance of land & death. the gift is void if the donor recovers his health, but the dance is an incase right & death is joined upon the death of the donor. There must be an actual manual tradition of the article to the donee, otherwise it would amount to a nuptial will, and a man might devise all his property without writing if an injury had been done to the legatee before the death - the donee has a right to the action of Trepleas &c. 2 Key. 431. 31 W. 376. It is said that notes of hand cannot be ~~grants~~ the subject of a dantio causa mortis, and so of bills of exchange &c. but there appears no substantial reason why bills of exchange and all negotiable notes are not the subject of this gift.

A legacy given with this condition, that the legatee shall not marry. the condition is void. to this rule there is one exception. Where there is a legacy to a wife, with the condition, that she shall not marry. the condition is good and if she marries the legacy is void. If the condition is not to marry till a particular age, the condition is good if that age is reasonable, as not to marry till 21. If the condition is not to marry a particular person, the condition is binding. If the condition is not to marry a person who has been married, the condition is void. But this not so.

If the condition is that the Legatee shall ~~not~~
 receive without the consent of particular person
 this is a ^{valid} condition: but if the Legatee
 is actually given over to another person, upon
 violating the condition, that other takes the
 legacy 11th 40th Pre in Chan. 56th estate in

Where a man has given away all his specific legacies
 and then has given a pecuniary Legacy
 of 100 £ to be paid out of his personal estate
 this is a charge upon the specific legacies and
 shall be paid out of them Pre in Chan. 39 B

Where a man directs that a legacy to A. should
 be paid first and the estate does not hold
 out to pay all the legacies. A must share equally
 with the other Legatees inasmuch as directing the
 testator directed it to be paid first 11th 31. 34th
 34th 96

By the Eng Law it is established that the specific
 legacies shall be paid first. but it is very questionable
 whether this comports with the intention of the testator
 and our Law is not so settled but that it
 may be contested. Whether all ^{my Legatees} shall not share
 equally. In Eng. the Exor in paying a Legacy may
 always require a bond of the Legatee to refund if
 there should not be left assets enough to pay
 the debts. but if he does not take such bond
 the command of authorities are that he cannot
 come upon the estate. if there should happen

such a deficiency of assets. but this is contrary to justice, and one authority opposes the idea. But the Exr. must have made the payment advantageously, for if he has been compelled by the decree of Chancery to pay over the legacy, he may revert back to the Legatee in case there are not as yet sufficient to pay the debts, altho he has taken no bond of the Legatee. If the Exr. does not know that there are debts, and pay off the Legacies, and afterwards debts arise, he may call upon the Legatee altho he has taken of them no bond. By our statute, the Legatee is compelled to give a bond to the exr. upon receipt of the legacy, but if the Exr. should neglect to take such bond he would be in the same situation as an Exr in Eng.

The rights of creditors against Exr and Legatee. The creditors may at all times resort to the Exr. and increase the Exr's liability. If the creditor may resort to the Legatee who has received the legacy, but it is a question whether the Legatee is liable when the Exr. is not a bankrupt? there seems no reason why he should not be liable, but what this there is a difference of opinion 2 Vey. 193 2 Vent. 348. 360

If the Exr. after paying the debts and specific legacies, pays the whole estate, and the residuary legacies which exhausts the estate in his hands the Legatee

Legacies

may call upon him for their satisfaction of the legacies in preference to the estate interest which he in his hand previous to paying the pecunies obligated. But his question whether the Legatee who has received his money can be made to abate.

The property vests in the residuary legatee upon the death of the testator. But the Exor is not compellable to plead the Statute of limitation in bar of a debt, and is not guilty of devastation if he does not plead it. The same may be said of an usurious contract, he is not bound to take advantage of the usury. But upon this last the authorities are not uniform.

If the Exor is in failing circumstances, a court of chancery will compel the Exor to go to his hands & pay over the legacies. Our Statute has made it the duty of the Exor to give bond in the first place. If the heir to the real estate has taken the personal to redeem it, and thereby there is a deficiency of assets to pay the legacies, the Legatee may come in upon the heir. Both A 50. 10 if a hundred dollars & the effect, the legatee may call upon the heir both A 16

It is said in the 1st of *Pym* 122 that the specific legacies shall not abate, which is contrary to the current of authorities.

Where an estate is left to a man, as a relation, all his relations, *5 E 2* 31

It is a generally received idea that whenever a debtor is made Exr. it is a discharge of the debt and the reason given for it is he cannot sue himself. But this is no answer for an administrator cannot sue himself, and yet it was never thought that his administration was a discharge of the debt. But the Exr must be accountable to creditors if all the assets are spent. The practice of discharging the Exr's debt, originated probably from mistaking the residuum. If this is a just idea as Chancery has now altered the Law as to his taking the residuum, this ought also to be altered, and the Exr ought to distribute his own debt as the Administrator does his.

1 Brown in Chan 328.

Parol testimony may be admitted to shew capacity 2 *Pym* 159

if person is said to die intestate, who has died without a will, or who has made a will and appointed no Ex. or when the Ex. appointed refuses the Trust. In case the will has been made and there is no Ex. the court of Probate appoint an adm. or grant administration ex m leg tamento annexo.

As to who are entitled to the administration the rule is, the Ct. must appoint the widow as next of kin to the intestate. If there are several in the same degree of kindred the court may choose any one for administrator. In Eng. the widow is sometimes appointed administratrix as part of the estate, and some other person on intestate part. Grange 552. 1 Rob 908. p. 36. If the widow as next of kin cannot accept, the Ct are to appoint a creditor, and if the creditor cannot accept. The court may appoint any disinterested person, but the court are to judge of this discretion.

It may be that the administrator is an infant, or a minor, in such case the court appoint an administrator ad interim durante minoritate which lasts till 21. So if the Ex. is an infant under 17. The court appoint an administrator durante minoritate which however lasts only till 17. Then the Ex. sets for himself (C. 5th 9th).

He contended by some that an exor. cannot act as such at 17, tho we have an expess statute that he may. the reason that they give is that we have a statute subsequent to that allowing Exor. to act at 17. which requires that every Exor. should give a bond & man as no infant can bind himself by a bond. It is said this latter statute actually repeals the former. But it is more reasonable to say that the last statute enable the Exor. to bind himself by a bond before he is 21. than thus implicitly to take away an expess statute. (tho if the infant acts indiscreetly as to release debts which he has never received & he may have the privilege of his infancy)

It has been determined that when the minor happens to be the legal administrator the court may appoint whom he pleases to be administrator during the minority and is not confined to the next of kin. 5 Co Rep. 29 Hob 241

If the administrator or Exor. dies before he has settled the estate. If it is an administrator that has died another adm^r. is appointed who is called an adm^r. de bonis non. as of those goods not administered. This adm^r. need not be the next of kin. If it is an Exor. who has died. his Exor. if he has one is Exor. of the

first testator's estate. But the Exec. adminis-
trator has nothing to do with the first testator's
estate, but an administrator de bonis non
is appointed. Rd. 907

There are
If two administrators as Exec. and one of them
dies, the survivor is vested with the sole power of
administration

It has been agreed that a Trustee or administrator
as Exec. appointed in an other state can act in
this state. It has been determined by our Judge
that a Trustee can act here, then has been the
same determination in N. York

The adm^r when he is an out letter of administration
is as the Exec.
must give a bond with security as to the con-
dition of the land see the Statute

If any party is injured by the misconduct of the
adm^r or Exec. the injured person may sue upon
the bond in the name of the judge of the court, but
he must first indemnify the judge against costs

If the Exec. has neglected or refused to pay a debt
an action may be brought for the debt. But this
does not work a forfeiture of the bond Ld 916 or 360

Lecture 67 February 21st 1795

The court who has the power of granting letters
of administration has the power of rendering
those letters

One cause of rendering these letters is the legal incapacity of the person to whom they were granted, i. e. who after the grant becomes unfit to execute the trust as by frequently getting drunk the court may displace an executor who is so much incapable of executing the trust as by being drunk they will be cautious of displacing a man of the testator's appointment.

With regard to the action that may be brought against the Exor as administrator, I understand, the law seems to be unsettled. The authorities are contradictory. Some say that an action of trover may be brought against him, being who says incapable of administering. There is no question but that an action will lie against him as the property he has in his hands, after the revoking his power. It would seem that no action which would comply with tort ought to lie against him, any more than against an officer who had levied an execution, and afterwards upon a new trial the judgment was set aside. In such case if the officer had collected and paid over the money, no action can be maintained against him, nor trespass against the executor. So it should seem that when the

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Exor & Administrator

an administrator had in part executed his trust. If he had sold an horse and paid a debt no action should be maintained against him, but an action might be brought against the administrator for the goods he had and not might against the executor before he had paid over the money. If fault means has been made use of to remove the administration, the administrator may be considered a wrong doer.

The act of one Exor is binding upon all but this is not the case of an administrator where there are more than one, as they all must act jointly, as in releasing debts &c. 1st 460

For Eng the Exor & adm^r has nothing to do with the real property. By our Law as by the English the personal property vests in the Exor, and the real in the heir, but the real is liable for debts, and the Exor with order from the T^l of R. Duke may sell such Lands as the Ct shall direct.

As a general rule the Exor & adm^r may bring law and the action in the same manner as the testator could have done in his lifetime with some exceptions.

It was, formerly the case that no action could be brought by an Exor for any tort affecting the person of the Testator or his property as slander, trespass &c. But ^{by} the statute of Edward 4 as to slander asportatus, the equity which statute has been extended to all his property, and the rule now is that the Exor may bring an action for any tort whereby the property of the Testator has been damaged, and the wrong doer benefitted, as if A. had trovered the horse of the Testator, in such case the presumption is that the Taker has been benefitted by the Horse and no evidence will be admitted to rebut the presumption. But if it is a simple trespass ^{&c} by which only the property of the Testator has been injured, and that the trespasser has not been benefitted the Exor cannot maintain an action. As if A. had purposely killed the horse of the Testator. But equity requires that the rule should be enlarged, and that the Exor might be allowed to bring an action for every tort by which the property of the Testator had been damaged.

As a general rule the Exec is not liable for the torts, but for the contracts of his Testator. In both of the propositions there are exceptions. The Exec is not liable for the mere misdeeds of the testator, but if the estate of the testator has been benefited by any of his torts his Exec is liable, but not in the same action in which the testator would have been liable, for he cannot for the torts of the testator, be sued as a wrong

1. The Exec & ad. ought to be liable for all the tort of the testator, and perhaps this law may be re established in this country

The Exec is not liable for all the contracts of the testator, as for a contract whereby the testator was not nor could not have been benefited had he executed it, as where the only consideration the testator would have received from executing the contract, was from some third person and not from the person contracting with him. As where the testator was a sheriff and had received an Exec and had given a receipt to execute it according to law. If the testator does not thus execute it his Exec is not liable to an action. But if a consideration

has actually been paid, as is to be paid by the contracting party. The Eor is liable to an action for breach of the contract.

In Eng. the Eor may prefer his own debt to all others of equal rank. But by our Law he acquires no such advantage ^{to} by being Eor or Adr.

The personal property being first to be resorted to for the payment of debts. It may be of some importance to know ~~of~~ what is considered as real and what personal estate. The general rule is that whatever adheres to the freehold is of the realty. But corn growing is considered as personal estate. So are all crops or artificial grasses and go to the heir, but the common grass and hay go to the heir. — 3 Attk 13

The wife's paraphernalia vests in the Eor, but it vests sub modo, and is not to be disposed of for the payment of debts till all the personal estate is exhausted. If the paraphernalia has been taken for the payment of debts, in consequence of the personal estate being exhausted by the creditor, the wife is let in upon the heir. If the paraphernalia has been pledged by the testator, she shall have aid of the personal estate to redeem them. The wife in this respect is among the lowest of creditors, but above any ~~person~~ in her claims. 3 Attk 369

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Exr. & Administration

Lecture 68th - January 21st 1795

When judgment has been rendered in a cause of an executor and on his death, an administrator is appointed. he takes advantage of that judgment by a writ facias by which the judgment is affirmed in his the administrator's own name. In a writ facias it is an established rule, that no enquiry relative to any matter antecedent to the judgment can be gone into. In Eng. the Executor pays no costs. In this state he does, in want of the executor's industry.

Of the liability of the heirs to pay debts

In England the heirs can only be sued, as jointly debts the action is brought against the estate of the testator in his hands, rather than against him. for as soon as the next is named in the declaration, the judgment goes against the land and the heir is obliged to satisfaction of the debt, and this is the only case in which exec. can be sued upon land as to make the fee good. If the heirs sell the land so as to deprive the creditors of the land to the heirs become personally liable and the land cannot be taken, can the vendee be so liable as the heir

It is a question whether an action can in any case be brought against the heir. The reasons why it may in Eng. do not hold here. For by our Law the land is in the hands of the Ex^{or}, as the payments & debts. The land becomes liable in Eng. by means of the expression "bind my heirs &c.", but what the obligor by his own act can do, i.e. charge his land, as the payment of debts, our Law has done expressly. & the words "bind my heirs &c.", in our hands are nugatory. No action can be brought against the heir in this state, where by due diligence the creditor could have had an effectual remedy against the Ex^{or} as to ensure the heir is liable, it is more reasonable that the property should be taken from a volunteer than that a creditor should lose his just debt. But if by negligence the creditor has lost his remedy against the debtor, Ex^{or}, he shall never come upon the heir to deprive him of his reasonable expectations.

In England the creditor who first brings his suit is served first. Except in the case of equitable assets, which shall be distributed equally among

all the creditors. Little need be said of the law of England in this respect as all our assets are equitable assets and distributed equally amongst creditors. An equity of redemption is considered as an equitable asset. In this note not only the estate of which a man dies possessed, but the profits which have arisen out of that estate are assets in the hands of the creditors for the payment of debts. By the court of Ch. those all actions against the Exor are suppressed till he has settled the estate in the court of Ch. and collected the debts due to the estate. if he does it in a reasonable time

Executor de son Tort.

There can be no such thing as an ex. de son Tort. where there is a lawful Exor ad. asking, and whenever a man, under these circumstances, acts as Exor. he is only a trespasser. This Exor. is liable only to the extent of the assets in his hands, and when sued by a creditor he may shew that he has none of the testator's assets in his hands, and it is a sufficient answer to the creditor. But this answer will not be conclusive against the

Cautious Esr. who may sue him in an action of
trover. such an answer however would go in miti-
gation of damages. This Esr. cannot sue to recover
debts, nor has he any of the advantages of an Esr. but
is liable to all the disadvantages

It is a question, whether in this state we can
have any such character as an executor de son
test. By our Law the creditors must average
the losses properly among themselves, if there
is not enough to satisfy the claims: whoever
infringes this principle is made to give place
to it. But it is evident from the nature of such
executors who is to satisfy in full the claims of
every creditor relying upon him to the extent
of the assets in his hands that this would entirely
defeat an average Law. For instance A. dies
possessed of £100. and has two creditors B. & C.
to each of whom he owes £100. B. gets ~~20~~ 10
to commence execution de son test. and take
the whole £100 into his own hands. B. then
sues D. and settles the whole of his debt. By this
means C. is defeated of his average share of £50,
to which by our Law he is entitled. If C.
should sue D. via hoc to his action that D. has

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none of A's property in his hands. If C sue B. and recovers of him his share of A's estate this defeats the transaction of D. and is admitting that we have no such character as an Ex. de can. Test. Every man who thus meddled with the estate would be considered as a trespasser & not an Ex. de can. Test.

There is one instance perhaps in which a man may be considered an Ex. de can. Test. Where A. to defraud creditors makes a fraudulent conveyance of his land to B. and dies. B. in this case might be considered an Ex. de can. Test. But it has been determined by the superior court that the lawful Ex. may inventory that land, when a deficiency of assets to pay the debts. If there is estate enough independent of the land sold to B. the Ex. shall never inventory it. far as between the grantor and grantee and all who represent them but a fraudulent conveyance is good tho not against creditors.

Rank of Debts in Eng. 1st Debts to the Crown
2nd Duties upon articles &c. 3 All debts incurred in last sickness 4 Judgment debts &c.
5 6 Simple contract debts

By our Law no rank is observed among debts except debts to the public and debts contracted in sickness. (and so Postles have understood this to mean last sickness). But as this is a Law founded in humanity, that a sick man who is poor may have suitable attendance &c by attending his physicians and nurses that they shall be preferred to other creditors, we may conclude that the statute means to give the preference to all debts contracted in sickness, and not confine it to the last sickness.

Judgment debts are not preferred to others but it may be a question whether after a lien is acquired, it is removed by the death of the party. Here we attack the goods of B. and acquire judgment and B. dies. It is held by lawyers in general in the state the lien is removed. But we conceive of a different opinion. It is a principle established that where ever a man by his diligence has acquired a lien he shall never lose it which in this case he must so if the death of the party is allowed to defeat his lien. But it is contended that the average must take place and that judgment creditors are not preferred. But after the levy it is hardly the debts are whole and

249 Exr & Adr.

If it is the debtors, it is his under an incumbrance. or lien which is no more removed by the death of the debtor than a mortgage which is taken up on his land. It is admitted on all hands, that if an Exr is levied and the property is to be sold in 20 days, and previous to the sale the debtor dies, the creditor does not lose nothing and the goods will be sold at the end of the 20 days.

69th Lecture. February 2nd 1795

It is a good defence for the Executor in England to plead Plene administravit. He ^{may} traverse this, or rely on a devastavit. Telling it an underlay and any negligence in the Exr. amounts to a devastavit. But the Exr. is not to be suspected as liable for any accident that may befall the estate if then a creditor sues the administrator as Exr. the Plea of Plene administravit can never be pleaded in this state. For if the estate is solvent the Exr. must pay all the debts. If insolvent must pay the average and if the creditor claims the full debt the Exr. must plead the average allowed by law of this State. If the Exr. has wasted or misapplied the estate the creditor must sue at the hand of the Exr. In one instance the Exr. may already plead Plene administravit, that is where the estate is only sufficient to pay the whole debts and debts contracted in sickness. If the

has said those he may plead *Plene administravit*. to a suit brought by another creditor. As a general rule the creditor cannot reply *debet* *avit*. As it regards a suit brought by a legatee the Car. may plead *Plene administravit*. as in England

Connecticut Statutes

Act of Distribution. *Advancement*. The little spending money, furnished by the father - the money paid for putting a child apprentice and money expended in educating a child, is not considered an advancement in England. But money for an education, taught in this state, where the fortunes of men are not large, to be considered an advancement, especially if so intended by the father. In England a child advanced by a mother loses no part of the father's estate 2 *Offm* 326

Statute of Car. regulating intestate estates which are insolvent. When the Car. represents the estate insolvent, the court of C. S. shall appoint commissioners, who are appointed to receive ^{and examine} the claims exhibited against the estate. They accept or reject the claims as they think proper, and paint out the average. The report of these commissioners ^{and} is conclusive upon the judge of probate. If the commissioners reject a claim, the creditor may apply

Go the court of Probate, and if he is convinced that the claim is just he will reappoint the same or other commissioners to enquire again into the claim, and their report is conclusive. But the creditor may appeal from this as well as from any decision in the court of Probate, to the superior court.

The report of the commissioners is not conclusive upon the Exr. for whenever a writ is returned against him upon the claims allowed by the commissioners, he may contest them. Courts of Probate ^{when the estate is insolvent} have ever debt very high by the widow, and have gone beyond what the statute contemplated. Whatever is secured from the levy of an Exr. all her paraphernalia, and other things in provision. This practice has been sanctioned by the superior court.

When a creditor has not brought in his claim by the time permitted by the court of Probate, he is barred from exhibiting his claim unless such creditor can afterwards discover estate that has not been inventoried. The decisions upon this last cause of the statute have been contradictory. Moreover it is of opinion that such creditors

shall first be made equal to the other creditors and if there is then remaining any of such uninventoryed estate, it shall be averaged among all the creditors.

Lecture 10th February 20th 1877

Can Executor Admin^{str} State estate

an appeal may be taken from any decision of the court of Probate by any person aggrieved by such decision. A decree of the court of Probate never settles the title to land; not a partition of land between particular claimants is conclusive unless appealed from. But as the partition affects other claimants it affects no title, and these last claimants may bring a writ of execution against those to whom it has been distributed by the court of Probate. When power is given by the testator in his will to sell lands to pay debts, the Ex^{or} need not apply to the court of Probate for directions to sell. If in such case the Ex^{or} refuses to sell, the money may be collected out of him by the creditors.

If the court directs a particular lot of land to be sold to pay the debts, the Ex^{or} or Ad^{ms} has no right to pay the debt himself, and retain the land in his own hands. As the land may be worth ^{& sell for} much more ^{than} the debts amount to, in such case the surplus must be distributed among the heirs, so that the Ex^{or} must always sell in such case, and as the surplus is a tribute to the heirs.

The cause of probate in certain cases is
 caused to appoint ^{one of} the chief creditors and if he
 refuse he must appoint some other, and if
 he been determined not to, the chief creditor
 seeking, he may appoint ~~any~~ that person
^{and he is} ~~not~~ confined to the creditor in his appoint-
 ment.

Adults may dispose of any of their property
 as personal by will. Minors cannot
 dispose of their real property, nor
 their personal till 17

February 27th 1795 Lecture 11th

Wills must with more indulgence than
 other instruments, in their construction. The
 intention of the testator is the guide, and
 will be pursued unless it is inconsistent with
 the rules of Law. By this last expression is
 not understood to refer to the wording of a will
 but to the nature of the estate given See Par.
 Cas 323

It may be a question whether a deed and all
 instruments to receive the same like
 not construction with wills. But the intention
 of the parties should prevail, is of as much
 importance in a deed as a will. The true
 and best rule should govern the construction
 in both cases

With regard to evidence the general rules are the same as in contracts. It has already been observed that parol testimony may be admitted to rebut an equity. If any ambiguity arises from the will itself, it is a general rule that parol testimony shall not be admitted to remove the ambiguity. But if the ambiguity arise from something extra the will, parol proof may be admitted to explain it, as if a man gives an estate to his son Thomas and he has two sons of that name.

As far as it relates to the creation of a title no parol proof is admissible 2 Atk. 792. But as it regards the extent or quantum of the title parol proof is admissible see an excellent case 1 Brown in (ant) 72.

In a disposition of real property the words to it and the heirs of his body create an entailed estate, not so in personal, even admitting it to be the intention of the testator, to entail the personal, well as the real, still it can't take effect for it is inconsistent with the rules of Law. The last will always prevails again the first. But the first is revived by a republication, as a revocation of the second.

There is no necessity of any witnesses to a

will of personal property, or as of any signing, if the will is written in the testator's own hand. And it is good if drawn by any other hand provided he approves it, and his testimony is admitted to have this his approbation.

To pass real property by the devise, there must be three witnesses, subscribing in the presence of the testator. The name of the testator written in any part of the instrument with his own hand is a signing.

It is a rule that a will is good to pass the personal property, which will not pass the real. But this is a very bad rule and must defeat the intention of the testator. As when a man in England gives all his personal

property to the eldest son and his real to the other children; and his will having but two witnesses will not pass the real. The eldest son then will take all the real and personal estate. *1 Brown 99 2alk 688*

It has been made a great question, and perhaps is not yet settled. How far interest begins at the time of making a will shall affect the witnesses? See the case of *Ansty*, and *Darby* in *Strange*. & *Wyndham* & *Chetwind* *Burns* likewise, see the opinions of Lord Mansfield and Camden, in *Morgan's essays*. In the cases of *Wyndham* & *Chetwind* & *Darby* see in *Powell on Devises*

Lecture 12 February 28th 1795

munerative wills. had no restraints upon them at common Law. but by the Statute of Charles they are laid under so many restrictions that they are almost prohibited. But by that Statute a munerative will, ^{of personal property} in good of the ~~Testator~~ does not amount to 30 pounds. by the Statute three witnesses are necessary, some of them must be specially called. the will must be made in last sickness, in Testator's own house, unless he is on a journey and taken suddenly sick. it must be reduced to writing and proved within six days. We have no Statute regulating these wills, but our courts have adopted the reason of the Statute of Car.

Of ~~Provisional~~ Revoking wills. See Lectures on Devises of real property.
Upon the death of the Testator the Exr may do every act before production of the will, that he can after except carrying on a suit in Law. When the Exr. has done any acts as Exr. he is not at liberty to refuse the trust. Quia, Exr. is at liberty to refuse the trust. this with us is regulated by Statute. If two Exrs are appointed and one refuses and the other accepts, the refusing Exr. may at any time during the life of his Co-executor, act as exr. notwithstanding his prior refusal. When a suit is brought by the acting Exr.

it must be in the name of both Exors, but when a suit is brought against them, the acting Exor only is to be named & if one of the Exors refuses, in this state he has nothing more to do with the trust. When the acting Exor in such case brings forward a suit, it is usual in our declarations: to name him, as the only acting Exor &c.,

Our wills are framed as the probate of the will is in the case of probate, where the Exor. either brings in the witnesses or the judge of probate attests them.

Lecture Bismark 3d 1795

When an executor is sued and a recognized no judgment goes against him personally but against the goods and chattels of the testator in his hands. If the Exor neglects to pay those debts, the officer returns a non est. & si se quia then issues to call in the Exor to show cause if any he has why judgment shall not issue against him. If he shows no sufficient cause, execution is awarded against him personally. de bonis propriis.

It has been already observed that in this state where the average law prevails, that the Exor cannot plead de bene administrat. and of

caus deusant cannot be applied. Instead of this our practice is to sue the Exr upon the bond. When he has been guilty of a default & the bond has once been sued and judgment rendered upon it. if the creditors &c have further occasion to resort to the bond it is done by a *reine faibles*. With regard to a *reine faibles* it is a rule without exception that the debt can plead nothing which he might have pleaded in bar of the first action. his defence must consist of something subsequent to the former judgment which the *reine faibles* counts upon.

The Legatee in Eng. applies to the ecclesiastical court as court of Chancery. In this country to our common Law courts. & the proceedings are the same as in other suits to the suit of the Legatee. the Exr may plead here administravit. & the Legatee may only deusant. If an estate in Land is given to a devisee. upon a condition that he pays certain Legacies. if he takes the Land he becomes liable to the Legacies. and it is never after at his election to abandon the land and refuse to pay the Legacies. If the Exr declines the trust and an administration is obtained. the Exr. can never resume the execution and administer *pro & lic. 92*

Where two Ears have been appointed, one re-
fuses and the other accepts, the refusing Ear may
recede at any time during the life of the other
30 Bar. 1463.

The authorities to the different points laid down
as to time to Ear are 3 Co. 340. Plow. 186
Yel. 160. 8 The 136. 1 Roll 300. Plow. 280
Hutten 31 1 Roll 302-3 (20 Ely 37) 2 Roll 554
The release of an Exor and not of an admors
notar 1. 1th 400

An estate is given to A for the life of B. A.
dies before B; what becomes of the estate?
Black in his commentaries says the estate is given
on a ready and is open to the first account
upon the death of A. It can't go to the Exor
for it is real property, nor to the heir, for want
of the words of inheritance in the grant. But
by the act of Car. and also of James 1st, the Exor
takes the estate to pay debts and to distribute.
If the estate was given to A and his heirs for
the life of B, the same difficulty would seem
to occur for by grant an estate of inheritance
cannot be granted out of a life estate. But the
devisors have been for the heir takes the
estate as a nominee in the original grant
which is making the word heir signify a per-
sonal person. contrary to its general import
and the same note has been annexed to it

Is the husband as ^{Administrator} ~~Exr~~, entitled to the chase
in ~~possession~~ of his wife without liability to account?
By the statute of Charles he is, but this statute is
not in affirmance of the common Law, but is
affirmance of a practice which had sprung
up in violation of the establish maxims of the
common Law

The state of New York have adopted the English
Law upon this subject with few exceptions, as
that Land is liable to pay all debts, in case of
a deficiency of assets. And in case the testa-
tor's property is not sufficient to pay his debts
an average is to take place among all the
creditors.

Lecture 14th March 4th 1795

Of little by a company

See the most of this Lecture see Blackstone's
commentaries 2nd ed

But so long as a man can retain them in
view before his hut when they once get fairly
away. They are the property of the first fastidious
finder. If several an another man's hand the finder
may cut the tree, and is no trespasser, otherwise
his right to the bees would be of no service

251 Discrepancy :

We have a statute directing that when property that has been lost, is found the finder shall advertise it, and if no owner calls for it is to be sold, and the avails to go to the Crown Treasury, which is in imitation of the law in use in Eng. It has been determined by our courts that money does not come within the statute, and if no owner appears it goes to the finder.

Emblements are sometimes considered as real and sometimes as personal estate. In a grant of Land they pass to the grantee as real estate. But they never pass as real estate by descent to the heir, but go to the Exr. They are considered as real, in that they cannot be stolen and any act animus furandi is but trespass.

Of an authors right to his works see 4 Burr. 2303

Lecture 15th March 5th 1795

Executions. Eng Lan. where the suit was brought to recover Land, the judgment always ascertained the title, without an Exr. and he who recovers

might enter directly upon the land, without being a trespasser. It is a matter of convenience to the Court & Exn. by which means all such matters may be removed. But law is a little different in the English. He who has the right of possession has a right of entry generally. See 6 Lit 34

In England an Exn. must issue within a year and a day, otherwise the Offt. cannot have one without a special favour. In this state no definite time is fixed within which an Exn. must be taken out. the Superior Courts determined they would not give one out to the end of fifteen years. Perhaps 12 years is a sufficient length of time to create the presumption that the debt is paid or rather judgment satisfied.

In personal actions where the suit was instituted to recover money, by the common Law no Exn. could issue against the lands to have them sold. except in the hands of the heir as assets for the payment of debts.

At common Law no Exn. lay against the body, except the suit was brought for trespass vi et armis. This by statutes a fiction has now got to be the most common Exn. in England and is called a *copias ad satisfaciendum*. by this Exn. the body is taken and committed to prison.

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which is a pledge as temporary satisfaction of the debt. Whenever the body is legally discharged as by death or by running out of goal, the debt revives, and Exn may issue against the chattels but not against the body again which is the case in this state.

A fieri facias, could always issue, which is an Exn. against the goods and chattels, which is of fieri is to sell and raise the money for paying the debt.

Levass facias issued de terminis & Castellis. The chattels were by this Exn sold and sold as before, in a fi. fa. but not so with the Land where Land had been leased, it might be leased upon, this did not affect the lessee, but put the Creditor in the shoes of the debtor, i.e. the Lessor, and upon notice the Lessee was compelled to pay the rent to the Creditor. If the Land had not been leased, yet it might be levied upon, and the creditor by this acquired a right to enter upon the Land and cut the woods and take the emblements, till his debt was satisfied. This Exn. is now out of use in England, but we may have use for it in this state, for it is sometimes the case that the debtor to defeat the creditor will make a long lease & by that means secure to himself an ~~an~~

annual income. While the creditor can have
no means by which he can get his debt, unless he
can have a *levam facias*. for it is very certain
he cannot turn the Lessee out of possession or
in any way affect them. a *levam facias* would
be entirely new in this country. Pland 441
3 Co Rep. 11

A *fieri facias*. may go against every species of
personal estate, emblements, & terms for years
where a man ^{the debtor} possesses a term for years, and an
execution goes against it, it may be extended, i.e.
its yearly value may be ascertained and set off
for so many years as will pay the debt Pland 368
8 Co Rep 171 1 Lalk 323 1 S. D 407

If the property ~~should~~ levied upon should perish in
the hands of the officer, before the day of sale or
if an error taken in execution should die, the debtor
loses it. If the officer had sold it and should become
a bankrupt, so that the creditor cannot obtain the
money, the loss is the creditors. 10 Rol 890

Elegit. This is an execution against the goods
and lands of the debtor. The chattels are not sold but re-
mained off the creditors, and by this execution, one half
of the land only can be taken. This is to be extended for
the satisfaction of the debt

Leicester 76 March 6th 1795

In this state the Exec goes against the person
the chattels and the lands. the body of the creditor
can never be taken if he will turn out his person
at judgment. nor upon the attachment can the
body be taken if debtor turns out his person
at first. Our Exec. can take all the english
copy. except the glebe. When lands taken it is
appraised off. to the creditor by 3 men. the debtor
crosses and the creditor answers. and a justice
of the peace appoints a third. this is a bad
practice for the debtor will always shop his
best friend and the land will often be priced
too high. The creditor has an election to take
the land thus appraised. Our statute refers
to lands held by the debtor in fee simple. but
we have a practice of extending the term for life
as in England. and so with entailed estates. a
term for years is considered personal estate
but the heir as reversioner is never to be af-
fected by the extending. The extent is by three
men. in England by 12. but as our statute has
said that 3 men are sufficient to appraise off
fee simple estate ^{in fee simple} to appraise a
term. In one instance ^{in Peterfield} the term has been
sold at public vendue. but lands are not to be
sold in this state at vendue. besides it is much

better for the creditors to have them extended
 for by this means the creditors may all get their
 demands if the debtor lives long enough. but
 when they are sold, it will be at a low price &
 not go as far in satisfaction of the debts.

The statute has directed, that the articles taken
 shall be brought to the mart and sold, but it does
 not appear to have contemplated emblements

and leases for years, which cannot be brought
 to the mart. But with regard to emblements we
 have a practice of ^{wasting} ~~wasting~~ all they are secured
 thereof so that they may be brought to the mart
 and sold. Mr. Peckel thinks that it had better be
 sold immediately and let the purchaser harvest
 his emblements, and that it is not necessary

to bring them to the mart, for where a lease
 for years is sold the land can't be brought to
 the mart. As our statute has not contempla-
 ted these cases, we have recourse to the com-
 mon law, and it is observed that by the
 fi fa. a lease for years may be extended

It ~~was~~ has been a question whether money
 can be levied upon it, there has been an opi-
 nion in our courts that it may, ^{and it is not carried to the mart, but indeed} Mr. Peckel
 thinks it ought not, for it cannot be sold (but
 it may be indorsed upon the execution)

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Executions

Suffering money to be levied upon argues the
 Officer's great power to cheat and embezzle the
 money, for he may break the debtor's desk and
 take 1500 and indorse but £10. (There is thus
 not the same danger from jewels and other subjects
 of a like nature that may with the same ease
 be embezzled) There is a case in L^d Hardwicke 48
 that determines Bankrupts cannot be taken
 upon Exec. nor any choses in action.

If the property sells for more than enough
 to pay the debts the Officer is a trustee to the
 creditors for the surplus.

By the words of our statute it would seem
 that the Exec. must be levied within 60 days
 but the uniform ^{decision} practice of our courts has been
 that the Exec. may be levied after the 60 days
 has expired. The national court have given a
 contrary decision, and perhaps the law will
 be altered.

77th L. Chanc. 22 March 1795

3rd. . . where a man will do, &c., &c.,
 or shall do, &c., &c., that he shall do a
 certain act, and, if he do so, &c., &c., it
 shall be void in execution &c.

Bail

The person who gives bail has a right to
 restore him again to his original si-
 tuation, and liberate himself as if a
 man is in place of confinement, and I
 give hand for his liberation, & may
 when I please receive my money. As with
 regard to property, if bail is not given, the
 person's hand, it is a pledge for the security
 of him who bailed it.

Rule. He who is bailed is always discharged
 when he pleads the warrant & is in a good
 situation, as at the time of bailing. He
 as good as he would have been if he
 had not bailed the man.
 The several kinds of bail that are to be
 taken, & notes.

Whenever a man is arrested in all these
 cases, he is entitled to bail. This is not a lo-
 cal provision, but obtains in Eng. if the bail
 is sufficient, and the officer refuses to re-
 lease him. Appearance at the day does
 not mean strictly at the return day in
 court, but at any time so that the execution
 may be levied, and the return never
 need appear in court at all, in order
 to exonerate the bail. But the bail is
 liable whenever the officer makes a fair
 man not in custody upon the return for
 this that is not a reasonable time the
 Court says. The Eng. Law is more strict

When the bail surrenders up the deceptor in court. the clerk must record it, and then a tax exonerate, the bail, a record of this is absolutely necessary. Special bail & bail to the officer are precisely the same and are received the same as a tax exonerate.

Wiley, Sep 18

A man left is made responsible if it is by the instigation of the creditor, he can't sue the bail. If it is not the man's fault, for no man shall take an advantage of your weakness.

But the creditor had no hand in it, but the officer did it of himself. Let the bail be liable to the creditor, and the officer to the bail. But this has never been decided. When the bail has become liable, the creditor shall take the bond given to the officer, and sue the bail upon it. But if the ~~bail~~ ^{officer} will not surrender up the bond, the officer is more wholly become liable to the creditor. But say the bond is insufficient and the creditor will not take it the officer says he is sufficient. The creditor is the judge of this insufficiency and he may sue the officer, & the officer may defend and if he shows the bail to be insufficient, the creditor must turn to the bail, and the officer is exonerated. Suppose the bail is in default, and

in some instances, but afterwards becomes a bankrupt. The officer is not liable, as he is removed by our courts. —

If the property is attached to ^{the} judgment, it may be bailed in the same manner as the bailor. It is by release and when given ^{as} a security the property may be turned out and this exonerates the bail. But if the property attached is not turned out and the release is ^{not} given, the bail is liable.

The debtors ^{own} hand is not sufficient, and if any justice of peace takes it, he is himself liable to the creditor, so determined by our courts. —

There is one question of importance yet undetermined, and which may yet give rise to disputes. So far as Act 106, gives him by attachment, & all the property he can find is £25⁰ in the matter the creditor has a release of C. in his hands. A person with the best of reasons is to hold that the question now is, whether he will be liable for the whole £100 or only for the £25. In determining this question if we refer to the principles of Bail, which are, that if the Bond is made, the creditor is in a good situation as he would have been had it not been for the intervention of the Bail. He is discharged, or must immediately determine that the Bail in the case put would be liable only for the £25. But in opposition to the

in the chief words of the Statute, which are that the Defendant shall move all damages & costs recoverable agt. the Plaintiff - I get over that. There are certain arguments that I think concerning - in the first place it is not stretching the words of a Statute further than in many cases has been done. Besides this I do not think that it was the intent of the Legislature when they made the law. Whence attempts to let off the debtor to receive bail by suing and attaching to the amount of £500. When the debt is only £100. the creditor is liable to an action. There are certain instances in which it is not to be carried on by the plaintiff without and this is to secure the ~~plaintiff~~ plaintiff of costs, and a man who is adjudged by the court to be a bankrupt that he cannot pay a bill of exchange must get bonds.

Lecture 18th March 18th 1805

Brands in an opinion said a man is liable to a writ of habeas corpus if a man will not obey an order of the court to pay a debt. To pay a debt he applied to effect. generally speaking the court is very ready to grant all that is necessary for subsequent to giving the writ. But in some cases the defendant is liable to a writ of habeas corpus if the

Bail

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It is not in the power of the court to appeal at all, for the appeal def. of the judgment yet the appellee may obtain a judgment, by moving to have the appeal argued & judgment affirmed so that he is not driven to the end of error. When taken out bonds are generally given, but not necessary, to, and when taken is a safeguard to the judgment. This is and has nothing to do with the costs, but it is to secure the creditor against any damages he may possibly sustain in consequence of the writ of error. As by the Defth. moving off his person and property so that no writ of error should be sustained without a bond as large as large as the judgment. Bonds are to be given in an audit & Quenda for the same reason as above stated.

If the officer refuses sufficient bail, he is liable in an action on the case, same way in an action for false imprisonment. Per West's case at a nisi. (10 Cas 196 2 Nov 31 1 Lev. 189. Our court of errors have given it as their opinion that action on the case is the proper remedy. ^{in some cases} Per 100 80. Officer not liable if bail apparently sufficient.

Без

A nation can't say, "Here, the slaves
 are; hail is not liable to an action. But
 you are a man. I. we can't be judged by
 ancient rail.

is not necessary to arrest a de-
fendant in jail to find out if he is
guilty of the crime. The fact that
he is in jail is conclusive evidence of
the arrest.

Co. Eng. 624 - 460. Mass. 428 2 Mead 83.
 not habit in an urban parish
 of rail. Asnerge only.

In case a judgment is reversed, by court
of error, and the *supra* ^{causit} *causit* upon the
case being brought up again before the su-
perior court and an other judgment given
is the bail discharged by the first final
judgment? Different opinion Cro Jac 9th
Nov 850 the two last cases say the bail
is liable

3. ^{and} 80. the Bail cannot exonerate him
self by delivering up the detax to the
sheriff. He must be delivered into court
Bail piece

Co. 181 561

Defense against the bail bond. If the Prisoner has been surrendered up in due time and taken on the Execution good defense Where the principal is confined in a jail in different county. the bail may have a writ of ~~habeas corpus~~ ^{habeas corpus} to bring the body into the county. when the bail is leaved Prisoner is returned to his former prison

Lecture 19th March 12th 1795

Evidence. Who may not be witnesses.

- 1 Persons interested cannot be witnesses
- 2 Persons infamous
- 3 Persons destitute of discernment
- 4 Persons entrusted with the secrets of one of the parties as Lawyers

1st. The interest must be a pecuniary interest and not that arising from friendship and relations. The quantum of interest is not material the smallest excludes a witness. It is immaterial whether the interest is direct or consequential. The Bail is excluded far by judgment against the principal he may be affected consequentially yet the heir apparent is ad-

admitted in a question that concerns the title, and it is apparent that he may be subsequently interested. We have a practice in this state of changing the bail where his testimony is wanted.

It is a very unsettled question, whether the person interested in the question only, and not in the event of the suit, may be admitted as a witness, as *A. v. B.* and is prosecuted publicly. *B.* is admitted as a witness, yet he is interested in the question, for it leaves the way to his own recovery. & as Holt said "we are certain to hear of it again". In all cases of public prosecution the person ^{injured} ~~interested~~ has ever been admitted as a witness, as in the case above *Ex. Inq. 339. 110. 111.* Whenever a man was prosecuted for a robbery, perjury & usury, the ~~person~~ person interested in the question was not admitted to testify. The old and the rules are entirely irreconcilable. But the man who had paid up an usurious note was admitted to give evidence in the *Proctor v. An.* The Lord Chief Justice had never said as on the rule, that the man interested in the question, tho' not in the event, is a competent witness, & he can use the judgment to help himself. He is excluded. *Burns 2251*

Is the same point see 3 Durn 27 30
Our courts have hitherto pursued the an-
cient English practice, contrary to the cases
in Bursan. and Deconford

As the rule of excluding persons interested
from being witnesses, there are many excep-
tions, arising from the necessity of the case,
1st The act of an agent is imputable by an
agent, tho' by his own oath he severs him-
self from any liability to an issue, to his
principal, as where A sends money in B.
to C. B. is admitted to swear that he de-
livered the money over to C.

2nd. Where a statute will wholly fail of
being executed, if the person interested is
not a witness, he is admitted. Upon this
fading it is that in Eng. the person ob-
liged is a witness against the hundred
Liberty in this state, where a person has
thirty stole, he is admitted to testify to
the fact of his having lost the property, but
he is not admitted to swear to the person
who stole it. tho' he caught the thief in
the act, and see him run off with the
property.

3^d In case of a voluntary escape, the escapee is admitted to testify to its being voluntary. When an action is brought by the creditor against the Sheriff altho by thus testifying he saddles the Sheriff with the debt, and screens himself from any possible liability, either to the creditor or to the Sheriff.

4th In case of a rescue, the rescuer is admitted to testify to the persons rescuing him, tho he is as deeply interested as in the case of an escape. These exceptions are upon the ground of necessity.

Lecture 20th March 18th 1795

5th In an action of account, the interested parties are admitted as witnesses.

6th By certain English statutes, interested persons are admitted as witnesses. So in the State, the parties in each debt case are admitted as witnesses. So in an action of trespass, the Plaintiff is admitted to testify to the trespass, and that he is directly opposite to the deft. tho there are others who are opposite to the deft. to whom he is not guilty. The same is the case in our right Law.

Evidence

But our courts have given these laws a construction, *supra* construction, that the Deft is not found guilty, unless the Pltff adduces sufficient proof.

Courts of chancery, allow the Deft to swear, but this is not to help himself, but the Pltff. It is an appeal of the Pltff, to the Deft's conscience, the Pltff is not to testify unless the Deft, in the same way appeals to his conscience. But the deft cannot be compelled to testify as other witnesses, yet his silence is deemed a confession to what the Pltff has set up.

Yet the master sued for his servant's negligence may induce the servant to make that the accident did not happen by negligence. If the servant is interested, and if the ~~master~~ master get lost he has his remedy against the servant, as a servant is supposed to engage to conduct his master's business with fidelity. Page 1083

8thly a man is interested, yet if he has an equal interest on each side, he is admitted to testify.

9thly a man can all the members of a corporation are excluded from testifying, in a cause, let their interest be ever so small.

But by a variety of English statutes, many of our actions are now admitted to a trial by jury, & on causes, what the English have effected by statutes, our courts have effected by their decisions, not regarding the interest of the copartners, & any objection to this, arising from the necessity of the inquiry, that they should be admitted the rule is this, they are always admitted to show the fulfilment of any duty &c. it is incumbent upon them to be made of a Tawara was admitted to show that their bridges &c. were in repair. But they shall not be admitted to show a contract as recent, as that the ministers of the parish agreed to ~~except~~ of a smaller village that was first agreed upon, for the necessity does not here exist, the contract may be reduced to writing, the agent for the Tawara copartnership is entirely excluded, the parish with little reason.

Interestedness in the question, sometimes excludes sometimes not. *Phrange H 14. 545. 946. 1074*

If a man procures himself to become interested, as one of the parties does it, this shall not exclude him from testifying, a man is not thus to be deprived of his evidence.

If a man supposes himself bound in honor to pay a part, if the debt is just, he shall be excluded from testifying, & tho' he is not legally liable to pay any thing, to a man who thinks himself bound, tho' he is not, is excluded from testifying ¹²⁴ Strange 124.

The bail is sometimes obliged to be a witness, not for his principal, but for the other party, as if the bail is one of the subscribing witnesses to the instrument, in which case perhaps, it is best ¹²⁵ Strange 125.

The interestedness of the witness may be shown either by calling in other witnesses to prove it, or by challenging him upon oath, called a voir dire. in which he is only to answer with respect to his interest and not to go into the merits of the cause farther than, as to those facts which will shew his interestedness. If one of the Parties attempt to shew the interest of the witness from other evidence, he shall not challenge him upon his voir dire & vice versa. being a discontinued attempt. He shall not repeat ¹²⁶ to the other ¹²⁷ any ¹²⁸ any ¹²⁹ any ¹³⁰ any ¹³¹ any ¹³² any ¹³³ any ¹³⁴ any ¹³⁵ any ¹³⁶ any ¹³⁷ any ¹³⁸ any ¹³⁹ any ¹⁴⁰ any ¹⁴¹ any ¹⁴² any ¹⁴³ any ¹⁴⁴ any ¹⁴⁵ any ¹⁴⁶ any ¹⁴⁷ any ¹⁴⁸ any ¹⁴⁹ any ¹⁵⁰ any ¹⁵¹ any ¹⁵² any ¹⁵³ any ¹⁵⁴ any ¹⁵⁵ any ¹⁵⁶ any ¹⁵⁷ any ¹⁵⁸ any ¹⁵⁹ any ¹⁶⁰ any ¹⁶¹ any ¹⁶² any ¹⁶³ any ¹⁶⁴ any ¹⁶⁵ any ¹⁶⁶ any ¹⁶⁷ any ¹⁶⁸ any ¹⁶⁹ any ¹⁷⁰ any ¹⁷¹ any ¹⁷² any ¹⁷³ any ¹⁷⁴ any ¹⁷⁵ any ¹⁷⁶ any ¹⁷⁷ any ¹⁷⁸ any ¹⁷⁹ any ¹⁸⁰ any ¹⁸¹ any ¹⁸² any ¹⁸³ any ¹⁸⁴ any ¹⁸⁵ any ¹⁸⁶ any ¹⁸⁷ any ¹⁸⁸ any ¹⁸⁹ any ¹⁹⁰ any ¹⁹¹ any ¹⁹² any ¹⁹³ any ¹⁹⁴ any ¹⁹⁵ any ¹⁹⁶ any ¹⁹⁷ any ¹⁹⁸ any ¹⁹⁹ any ²⁰⁰ any ²⁰¹ any ²⁰² any ²⁰³ any ²⁰⁴ any ²⁰⁵ any ²⁰⁶ any ²⁰⁷ any ²⁰⁸ any ²⁰⁹ any ²¹⁰ any ²¹¹ any ²¹² any ²¹³ any ²¹⁴ any ²¹⁵ any ²¹⁶ any ²¹⁷ any ²¹⁸ any ²¹⁹ any ²²⁰ any ²²¹ any ²²² any ²²³ any ²²⁴ any ²²⁵ any ²²⁶ any ²²⁷ any ²²⁸ any ²²⁹ any ²³⁰ any ²³¹ any ²³² any ²³³ any ²³⁴ any ²³⁵ any ²³⁶ any ²³⁷ any ²³⁸ any ²³⁹ any ²⁴⁰ any ²⁴¹ any ²⁴² any ²⁴³ any ²⁴⁴ any ²⁴⁵ any ²⁴⁶ any ²⁴⁷ 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The husband and wife are not to testify for or against each other. Even if the husband consents that his wife shall testify against him she shall not be examined. The reason of this is to preserve the peace of families. *Hardwick 266*
 She may be a witness against her husband for his abuses to her. *Keane 633. 2d Wm. case But 115.* The same laid down by *L. Mansfield* to be good law.
 In cases of treason the wife may testify against her husband. Probably that would not be admitted in this country.

Lecture 81st March 14th 1795

When a number of persons have been guilty of an offence as if B. & C. had been guilty of an assault and battery, one of them may be tried and the other take the benefit of it. yet the others are interested for if they can so much as throw it upon one, the others are for ever clear.
 2nd. Infamous persons are excluded from testifying. No person is legally infamous so as to exclude him from testifying, till he has been guilty and convicted of a crime ^{to be} which crime must be of the crimen falsi, a crime of such a nature as discovers the person guilty of it to be defective of integrity. as perjury, theft, forgery &c. But drunkenness, - manslaughter, are not of the crimen falsi.

and of course do not exclude those convicted from being witnesses.

Perjury is considered in Eng. a common false and perhaps would be so considered in this country. There must be a conviction, and a mans infamy must always be shown from the record, and no new oral testimony can be called in to prove either the offence or conviction.

In this state if a man, after conviction of a crime, which excludes him from being a witness, obtains for a long course of years a good reputation, he is admitted to be a witness. In England a pardon restores the criminal to his competency as a witness, unless the statute on which he is convicted says, he shall never be able to testify, in which case the exclusion makes part of the punishment, and a pardon will not restore him to his competency. Vent 349. 5 Mod 74. Lat 689. A scandalous punishment for a very scandalous offence, yet not a crime, does not destroy a mans competency as a witness, but goes only to his credibility.

Infidels in Eng. were formerly excluded from testifying. Co. Lit. 6. But by decisions of courts they are now admitted. which is an instance of courts making Law 10th 21 Change 1104. See 2 Hawkins Pleas of crown 612

This principle was never questioned in New Eng. No one could sue or by the ever living God, is admitted. this gave rise to the par of Gaur 20th

A professed atheist is ever excluded. both in this country and in England 10th 45

Popish recusants & excommunicated persons are excluded in Eng. not in this country

Quakers in Eng. are excluded from testifying in criminal cases, yet admitted to offer in civil. Bur. 1117 or

In case the Ptff appeals to the deff. can silence in chancery. The deff. is not obliged to testify if he will thereby subject himself to a penalty. neither is any inference to his prejudice to be drawn from his silence. But if the penalty is going to the Ptff and he releases the Deff. from the penalty he shall testify, as his silence, will then be against him.

The Party who calls in a witness can never impeach him. for if this was allowed it would be used wantonly

No man shall be called upon as a witness,
to execute an instrument to which by his
signature he has given currency 1 Dumf. 296

3 Pedale de titute of discernment are not
admitted as witnesses, as fads & idiots. Children
are admitted as witnesses, but there is no set-
tled rule as to the time, at which they shall be
sworn. If they understand the nature of an
oath, they may be sworn, and whenever they
have discretion they are admitted to tell the
story without being sworn 2 Hawkins
Oaths of the Crown. C. 12. George 700

4 Attornies and agents trusted with the se-
crets of one of the parties are excluded from
testifying in the cause. But what knowledge
the Lawyer has independent of the information
of his client he is bound to disclose if called upon
the oath of the ^{oath} is out of the ordinary form to tell
the truth and the whole truth, for what he has re-
ceived from his client he cannot disclose than ¹⁴⁰ 140
If a man who is not an agent &c is entrusted with
a secret by a confidential friend, he must dis-
close it if called upon. See a case in Dumf. & it
has been so determined by any superior Court

The of getting the witness into court is by a sub.
 poena. Which must be signed by some au-
 thority as a justice of the peace. If the expen-
 ces have been tendered to the witness he is ob-
 liged to attend at the court. If he neglects to at-
 tend. he is liable to be punished for a contempt
 of court. and he is likewise liable for all the
 damages the party sustains for want of his tes-
 timony. But it will be very difficult to de-

termine what those damages are. In Eng.
 a witness thus neglecting is fined £10. and
 liable to all the damage the party sustains

When a witness is summoned in all the evi-
 dence about him may be called in, as his
 papers &c. this is called a duces tecum. But
 when the witness has thus brought in his pa-
 pers he is not obliged to exhibit them, if there
 is any reasonable ground for keeping them
 back, as if they are his private papers.

In England the testimony must all be given
 in vide vace unless the witness is such &c.
 which is a very good regulation. In France
 the testimony is all by depositions taken
 before the master of the rolls. In this mode
 no deposition can be taken within 20 miles
 of the court unless in case of sickness see Statute

But if the party summoning elects to have the witness present, the witness must come at the time & the place of the election part of the state, and sending his deposition will not excuse him. Depositions may be taken within 20 miles if the witness is sick or going out of the country, or is afflicted with some sickness which he will not probably survive. The deposition may be taken and used when occasion calls, tho' it is not till the deponent is dead.

Lectured March 17th 1795

Rule. The best evidence the nature of the case will admit of, is always required. But a parol contract may be proved by parol, though this contract might have been reduced to writing and higher proof thus created, the rule only means that the best evidence the nature of the case will under the circumstances will admit of. If a contract has been reduced to writing it cannot be proved by parol, unless it is the writing has been lost by inevitable accident, in which case parol proof may be admitted but it is incumbent on the party who states it was lost, for there may have been partial

payments, and indentments, and if the ^{deft} is allowed to prove the note by parol without proving the loss, he may at any time when a note is "lost" paid say that he has lost it and recover the whole. but his proving the loss does not entirely remove the objection.

Parol proof is never admitted to show a record the record itself must be introduced as a copy of it only suffices.

Where it is a thing recorded as a deed, here the party availing himself of his own deed must show the record, but if the title in the grantee could be effected without recording, third persons may show it by parol. As where A. conveys land to B. who neglects to get the deed recorded. 2. a creditor of B. hears of the conveyance and attaches the land, now the name of conveyance remains in A. and his conveyance to a subsequent bona fide purchaser will be good if B. deed is not on record. But A. does not convey to a subsequent purchaser, but brings a writ of ejectment against D. D. may then by parol that the deed was executed to B. from A. which is a good plea against the writ of ejectment, and D. in chancery may compel B. to have his deed recorded.

Evidence

Where the party declares upon a writing that
 was lost, the technical mode of declaring
 is that it was lost by time and accident.
 No parol testimony can be introduced to
 vary the operation of a writing, and no sub-
 sequent parol condition will affect the
 writing.

Altho the instrument says signed sealed and
 delivered, yet whatever relates to the delivery
 may be proved by parol.

If through mistake the writing bears a
 date contrary to the true date, the true ~~date~~
 and real time may be shown by parol. the
 date of the writing is prima facie evidence
 of the true time but the presumption may
 be rebutted by parol.

The natural import of the words as they
 stand in the writing ~~are~~ is to be taken as the
 true import, and yet a set of cases are applied
 to this rule as where parol proof is admitted
 to rebut an equity. The legal and equitable
 import of words in a writing are sometimes
 different. as in case of Mortgage, and bonds
 with penalties but in the last case courts of
 law as well as equity will now chance
 down the penalty.

On a general plea of bankruptcy, the Court may give the condition of the bond on which the action is brought in evidence, to show that he is not named by the certificate. Daug. 145. Alston v. Price

If any ambiguity arises out of the writing itself, parol proof shall not be admitted to elucidate the writing, but if the ambiguity arises from some matter dehors the writing, parol proof is admitted to explain it, as a man gives an estate to his son John, leaving two sons of the same name. See Likewise another distinction in the case of Fenner & Pounts v. Brown in which circumstances irrelevant cannot be proved and if they are, the courts are judges. When the question is whether it proves such fact, altho the court deem it insufficient, yet if any inference is to be made in favour of the point before the jury, the court admit it to go in evidence and the jury give it such weight as they think proper. But when the inference to be made relates

to same other point the courts reject it

As to the number of witnesses in ordinary cases the civil law requires 2. but the common law only one, our courts require but one. For treason and perjury, two witnesses are required

By our statute two witnesses as what is than to amount to two is necessary to convict a man in all capital cases. By tantamount is meant circumstantial evidence.

It may be a question whether one deposition is sufficient as we admit the Eng. common law with regard to the sufficiency of one witness, and as that law always requires vide vale testimony. Perhaps ^{one deposition} ~~it~~ should be deemed sufficient. Vide vale testimony is far preferable ^{to} that by deposition for here there is an opportunity of cross examination, and a villain may be detected in his story but here can he ^{no} detect a deposition if procured fraudulently. A man in this country made it a common practice for several years to procure deposition of witnesses. Tellers who would for a glass of rum testify to any thing

It is common for the Offg. to attempt to cut off the Depth. testimony in case of an battery. As for instance A. in the presence of B. & C. whips D. but D struck first and B. & C. can testify to it. to cut it off from his testimony B. & C. are put into the writ. If no evidence appear against B. & C. the court will order them to be struck out of the writ. or A. may claim to have either of them tried first and upon their being found not guilty they will be admitted to testify.

In some cases a man is not admitted to testify against himself as in case of a fraudulent conveyance from A. to B. C. the creditor of A. attaches the fraudulent conveyance. A shall not testify that it was as was not fraudulently conveyed. *Starky. 60.*

A witness may make use of his paper as minutes, for no other purpose than to refresh his memory, and not to read off his testimony, except to read off the words of one of the parties which he heard. A witness can not be compelled to testify to crimes to himself but he may do it if he pleases see *Dumford* Jurymen may be witnesses notwithstanding be in on the jury.

The declaration of a dying man in contemplation of death is good testimony

Lecture 3rd March 18th 1795

By the English Law any person summoned, as a witness, is not liable to an arrest while in court, or going to or from court.

The practice in this State is a little different, it is by a writ of ^{habeas corpus} ~~habeas corpus~~ as privileged. Such the witness carries with him and shews it to the Officer, if he then proceeds to attach the witness he will be liable in an action for false imprisonment. The English authorities do not dispute this idea, though they apparently ~~they~~ do, yet their practice is ~~apparently~~ ^{entirely} different. But is the Law here ~~still~~ a question not yet determined. Perhaps, no man ought to derive an advantage from such illegal act. Gent. Jansel ^{Cooper} 1

10th Nov 68 3rd App^y Perpetuating Testimony
if the witness is old or infirm, his deposition may always be taken, tho the cause has not come into trial. What a witness has said at other times, before a other hearing, may be admitted to corroborate or impeach his testimony.

What a ^{party} man has said against himself may be testified. What the parties say when looking together, either for or against them, may be testified.

Hearsay testimony is always rejected. It is

rule there are exceptions, as when the en-
quiry relates to the reputation of a witness, no
particular facts are to be testified, but general
reputation. It is not that a man, who is
supposed to be dead, is alive may be admitted
that a man had said under oath, may be testi-
fied after his death. Where the boundary of land
is in dispute, Hersey v. Bixby, is admitted
that old men who are acquainted with the boundar-
ies have been heard to say may be testified
of written evidence the first to be taken no
one of are the acts of the Legislature. In Eng.
General acts need not be pleaded nor noticed, but
private acts must be pleaded specially. But in
this note we may give in evidence any statute
under the general issue, but we cannot avail
ourselves of a private statute without either plea-
ding it specially, or giving it in evidence under
the general issue, for the Eng. practice see
Holt 227 Cro Jac. 112 560 Rep 114

Where there are two statutes, one giving the ac-
tion the other offering a defence, the latter must
be pleaded specially, as with us given in evidence, &
Prouse in a statute must in some cases be
pleaded specially, the note is all Choll 283 4
If a security is about to be avoided by some statute
the statute must be pleaded specially, as with us it may
be given in evidence as in case of usury

Evidence

29H

Statute of other states being in it is common
San book. Which San book is, printed by authority
by the state printer. The book is added and
the statute admitted.

Private acts that are not put in to the statute
book are proved by a copy, certified by the
secretary of the state.

Records of courts. the evidence of them is a cer-
tify certified by the clerk. and if the law has requi-
red that they be sealed. the copies are of no weight
without being sealed. Private seals must be
proved by the subscribing witnesses. so must
the instrument. if the witnesses are to be had
but if they are dead or out of the country the
hand writing of the witnesses may be proved.

In case the records of an office, not judgment re-
cord, are wanted. they may be evidenced either
by a copy certified by the clerk or by a copy attested
~~and~~ ^{taken} by same other person. and the copy read
to in court. by that person. It is a doubtful ques-
tion whether the copy of a recorded deed was
admissible and good evidence for the original
when the original is challenged? If the origi-
nal has ^{not} been destroyed by some means, inevitable
there can be no reason why it should not be ad-
mitted. It would open a wide door for fraud if the original
was not to be kept back.

In case an action has been brought and a recovery had, and afterwards a different person has been brought for the same offence the Def^t may plead specially the former ^{and judgment} acquitting it to be for the same offence. The Pl^t can only reply nil t^{ibi} record

Lecture 8th th March 19th 1795

The use of verdicts to be given in evidence in general they are not admitted. But in a contest between the same parties upon the same point a former verdict may be given in evidence ^{by no means} and herein I Stran. 308 2 Stra 1151. 2 Rol. 46

So a verdict may be given in evidence when the Pl^t and Def^t are not nominally the same but substantially as where a Lessee brings a writ of ejectment and fails. afterwards the Lessors bring a writ of ejectment against the same Def^t the former verdict may be given in evidence. H. and B. 472 2 Bragg 730.

So too where C has recovered of B. because he is liable to C when B. sues A. the verdict between A and B. may be given in evidence. He who produces the verdict must be prepared to 2 Rol 68 D. 3 Made in 1412

Evidence

Where a verdict has been obtained against a man, and a public prosecution is thereafter begun, he given in evidence against him in a private suit.

What a man has stated in a bill in chancery may be made use of as his confession in a subsequent trial. The words a man states in his declaration in an action at Law can never be taken against him.

Lord Mansfield much questioned the propriety of admitting, as a confession, what was stated in a bill in chancery. His answer in chancery is always good evidence for what is given upon oath of the Party. Vol. 221

We have a Law relating to the recording of bills, and when the age of a person is in question the proper way of determining the question is by the records. But if the birth has not been recorded, other evidence of the age may be admitted. But it is incumbent on him who requires, it to show that there is no record of the birth.

By the English Law a proof of the deed on which the action is brought is indispensable. But with us a deed is unnecessary.

The delivery of the deed may be proved by an subscribing witness. If the deed is found in the hands of the grantee it is presumptively evidence of the delivery, and throws the burden of proof upon the grantor to show he never delivered it.

A deed cannot be delivered to the grantee as an escrow. But such delivery with a condition attached to it is an absolute delivery. But a question which has come up before our superior court occasioned a division in the opinion of the court and with the Lawyers; is this: can the grantor deliver a deed into the hands of the grantee to become his act and deed upon the grantee doing something presently. A. gives A. delivers a deed to B. upon B. paying him down. B. takes the deed and then refuses to pay the money. is this an delivery still. the current of authorities is that it is an absolute delivery - so was the opinion of three of our judges. Is this is supposed the case in (20 Ely

635

Any erasure or interlineation of a deed by the grantee or obligee after execution of the deed and it is void and the obligor may plead non est factum but an alteration in an immaterial part by a stranger will not make it void 11 (3 Rep 47) Strange 1160 the same is the case in filling of blanks

Evidence

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Presumptive evidence is admitted and where the presumption is violent, it is conclusive. But great caution, particularly in capital cases, should be taken. as the presumption tho' violent, is not infallible. As in case of the murder committed at Berlin. A. stabbed B. with a sword, and left the room, at a back door B. enters the room at the same time, and draws the sword, from the hand of B. witness enters the room. While he is thus holding the sword, upon the strength of this evidence B. is convicted & executed. at 25 years from that time A. confirms the whole facts, in such a manner as left no room to doubt of the truth

Lecture 85th March 20th 1795

Lex mercatoria. It was formerly considered as a custom, and to be proved like facts and other customs, must have been plead specially. But it is now considered as a Law, governing the whole commercial world regulating the commerce of all nations. The general Law is universally the same, but there are particular local customs, a usage different at times from the general Law. This Law differs in many respects from the civil Law there is a necessity of uniformity in this Law

- 1 It is not necessary that in mercantile contracts there should be any valuable consideration, namely, the consideration, as in a policy, as in a contract.
- 2 Discharge, no fraud respecting the consideration will vitiate the contract at Com Law. But the least fraud vitiates the contract at the mercantile Law, as by false representations, & concealments of the truth, as in insurance, & the insured has read of his ship indisp. and gets insured not informing the insurer of the distress.
- 3 A discharge of one joint debtor, if a partner is discharge of both, if one is released, and in person when in upon an Oath it discharges the other joint debtor. It is not so by the mercantile Law.
- 4 Paid, may be admitted to vary the operation of a writing. The policy of this is questionable. But it is better at Com Law.
- 5 To pay in so many months once a month.
- 6 If the day of payment falls out on Sunday by Com Law, it may be paid on Monday by the mercantile law on Saturday.
- 7 At Com Law if the money is not paid at the day he recovers his damages, which is legal interest. But by the mercantile Law the real damages are the rule of damages. If A draws a bill upon B who refuses to accept it, the payee will recover the drawer his real damage. A rule is given in this country and course of giving 20% damages on the bill is 20 upon the hundred.

A bill of exchange is a letter from one man to another ~~to pay~~ to pay to a third as per a certain sum. There is a practice of a bill of exchange between two persons. A desc. is to pay to him a

disorder L -

Bill

Drawee is the man who draws the Bill
Payee to whom it is payable
as payable to Payee or order the payee has authority
to write his name upon the back and hand it
over to the one who is then entitled to call upon the
drawee for the money. Putting the name upon
the back is called the indorsement. All who in fact
the bill, are liable to the last holder, ^{to the drawee or acceptor} and he may
sue to call upon whom he pleases, in the payment

A bill made payable at sight. at the 15 days. & at
at usance this last means payable at a future day
usance differs in length of time in different countries

From the date & from the day of the date, the day will be counted inclusively at the morning as well do future. By the mensural law always inclusively

Orange 829 2d Mayd 281

Every man who accepts a bill has some day or
grace in this country and any three day is pay-
able at sight no day of grace is allowed
So any bill is merely a request to pay to
the holder a certain sum. The in same countries
it is necessary to express a value received and even
to specify the article which constitutes the value, say goods &c

Law Merchant

Promissory note for value Recd. I promise to pay
 1. A note is a negotiable note and regulated by
 the Law Merchant. It was determined that notes were not
 negotiable, and the fact holder could not bring an action
 12th 129. 2d Ray 75. 7. 8. 9

regains the obligation in his own name
 But by 12th 126 of 11th these notes were made ne-
 gotiable (as the 8th 126. 12th 126. who may draw
 a bill of exchange? any person who can contract.
 12th Ray 175. If one of two joint merchants accept a bill
 all are liable.

2d Ray 176 the drawer of a promissory note is the same as
 the acceptor of a bill of exchange

Promissory to pay to the bearer, the holder may call for
 the money and there is no need of their being indorsed

3d Ray 176 so make them negotiable, and
 make a note, the drawer may recover it if not
 indorsed. As if the bill has been
 stolen and sold the purchaser is entitled to
 recover the money against it, it is a species of currency

Bar. H 72

Bank notes & pass books, and if stolen and paid
 out the person to whom it is paid holds it

4th Ray 544. tender of bank notes is as good as if
 the tender is made in cash

5th Ray 544. tender of bank notes is as good as if
 the tender is made in cash. A note is a debt
 collected in reason of a debt &c the holder
 has a claim upon the person from whom
 he took it, as the contractor, he owes the
 holder collected upon the bank, within a reason-
 able time for the payment. What is to be con-
 sidered as a reasonable time, the next

will be more upon the common cases of
 each particular case, for no precise time is
 fixed. In commercial towns, perhaps if the de-
 mand is made within 24 hours, it is made
 within a reasonable time, but this will be
 wise depends upon circumstances. If the bill
 is sent to call upon the drawer within a
 reasonable time, he shall not come upon
 the person from whom he received it, if he
 is a holder of the bill. Banker. But he shall
 be the holder. Black. Rep. 1. 1st ed. 1794
 Change 115. Inward bill case 1 Change 416
 2nd Do 1294. — 1175 Bureau 532

Lecture 36th March 22nd 1795

A bill of exchange 1. Mar 1271 must be payable in
 money at the end of good

So if it is payable out of a certain particular fund of the
 drawer, it is not good. 1. Mar 1361 31 Mo 217

A bill of exchange 1. Mar 1515 is good, if the
 payment of particular fund

31 Mo 213 1. Mar 225 Change 1151 It must be
 certain, not depending upon a contingency, a
 it is bad Bus 323. Where the time is uncertain
 not the event certain. The bill may be good, but
 there are cases

1. Mar 217

Change 1017

It is not necessary that the certainty should be a formal certainty, a moral certainty is sufficient. *Thompson 211*. Such contracts are good between the parties contracting. The notes & good bills of exchange *Blackstone Vol IV* the form of the order is immaterial. provided the writing imports to be a bill of exchange. *The note 11th June 629 11th June 63*

The first decision was that value received must be in the bill. *11th June 1856* *Thompson 212* it is not now necessary. If the drawer does not accept or pay, the drawer is liable to the payee. if he has pursued the steps of the Law.

Acceptance of the bill. There is a question whether ^{or not} an acceptance verbally is good acceptance. It is within the statute of frauds requires a written taking to pay the debt of another. until it is an undertaking to pay the debt of another. but it is the payment of the acceptor's own debt. for the presumption is that the Drawer has effected the Drawer in his hand. *3 Munster 1674* *11th June 1856*

If there is an agreement to accept. the bill is a good acceptance when drawn. But if the acceptor has countermanded the acceptance, no credit is given. ^{of payment} *11th June 1856* It is not material if the bill is not a good acceptance.

A man may assent to the bill may accept it, and this is an acceptance for the honor, of the drawer, and the drawer becomes liable to the acceptor, not so in the Com Law

An acceptance may be very different from the tenor of the bill, and the acceptance binds the acceptor. As if bill is drawn for 500, and accepted for 300, it may be accepted for a longer period of time than bill expresses, as if a bill is drawn payable on sight and accepted payable in 3 months. But the payee is not bound by the acceptance if it is not according to the tenor

The bill is accepted say for six months, the payee alters it to three months, this does not destroy the bill, but the payee may alter it again to its first date and the acceptor is bound

The acceptor may accept to pay the bill in goods, as it may be accepted conditionally, but does not bind the payee. Page 115 2 & 116 9

Q. 2 What is a conditional acceptance?
If the acceptor accepts in writing, and tacks a condition, the condition must be in writing. Douglas 286, an account of indorses that he has the notes the condition is good if the drawer only writes presented as 100 and put his name to, is a good acceptance. Letter 115, a stamp and thing written upon the back of it is an acceptance

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Bill and Chase v. B. Burr 1663. If an en-
gager to accept he is bound if credit has been given
in indorsement. The indorser is liable to all
subsequent indorsers. The indorsement is some
times made full pay \$1⁰⁰ as 606. 639. 6633
and by this means the negotiability may be
destroyed. But the common method is only
to write the name, and leave it for any
person to fill up. So a man may write
his name to a blank note, and it may be
filled up so as to bind the signer Doug 496

The payee indorses the bill over to A who re-
sends it to B. without indorsing it. It is not liable
to B. upon the mercantile law, by an action
sounded upon the bill. 2 Doug 441 2. But
it is liable to B. in an action for money had
and received.

The holder may, write Doug 871 when the name
appears blank, fill it up as he pleases 2 Doug 871
A bill may be accepted for another person
to pay. in such case the bill must be presented
in due time Strange 1145

An agreement to accept a bill upon certain
conditions, is discharged if the conditions are
not complied with 284 Douglas. Mason & Hunt

Lectures 37th dated 24th 1795

Indorsements.

Is the negotiability of a note restrained
by indorsing to the indorsee. leaving out the
words, I, do, assign, note 136295 Bur 1222 that 477

If the propriety of the bill is passed, its negotiability can be restrained Aug. 617. or 629

Infants are not bound by their indorsements yet it affects no other party in the chain. it is as if the infant was struck out
 Change 516 Lex Merc 469 3rd Ed. 1 The assignee of a bankrupt may indorse

The bill can never be indorsed in part. but must be entire. Cuthw 466.

Drawer. his engagement. He engages, that the drawee is capable of binding himself. that he is to be paid, and that he will accept, and that he will pay it at the time for a full use of any of these the Drawer is liable to the payee Lex Merc. 469. He is to pay the principal interest and mercantile damages

If a man Hen Blac 313 writes his name upon a blank piece of paper and delivers it to another to be filled up as a bill of exchange he who signs is liable to any extent of a bill that may be drawn.

If the drawer refuses to accept. payee may resort to the Drawer immediately without delay or grace Lang 3 Milp. 16. and payee need not wait till the day of payment

The liability of the indorser is precisely the same as the Drawer. the holder may receive all his remedies at the same time i.e. he may sue the indorser & the drawer
 3rd Ed 80

Law Merchant

2^d Black 1235 If holder of a bill, may see a subsequent indorser, & then to the drawer, he has no opportunity to see any one of the previous drawers, and is not at liberty to disengage himself of the payee. He undertakes to present it for acceptance, at least as soon as it becomes due, if it is payable upon sight it must be presented within a reasonable time 1 Durn. 413. 2nd If the drawer refuses to accept it, notice must be given to the drawer, or the indorser, if he means to resort to them, or the holder must forfeit.

3^d Black 2670. And if the indorser promises to pay the bill, when the payee has not given him due notice of the refusal, yet such promise is void if indorser does not know then or afterwards (Barnard & Hurst, Curran). The payee must otherwise present the bill in due time, whether the Drawer accepts it or refuses (Thompson) 15. and this notice must be given by the holder. 1 Durn 170. The notice must be given the first opportunity, by parts where they are established Dan 39. The notice must be given to give the Drawer opportunity to recover his effects out of the Drawer's hands if the Drawer has not effects in the place, and the notice need not be given 1 Durn 410 1 Durn 410. but the indorser must still receive notice.

Upon inland bills of exchange, notice may be given in any manner, and the drawer is liable, but he is always liable to the present and

Lex Mercator

But in case of foreign bill, notice must be given in a particular manner. *Lex Merc.* H 60
The holder presents the bill to the drawee. If he refuses to accept, the holder goes to a notary public, who goes to the drawer & demands acceptance. If he then refuses, the notary draws up a declaration that it was presented & refused, and that the holder intends to recover all the damages he has sustained. This is sent to the drawee by the post, paid or if he has not, as soon as possible. At the time of payment he comes on & is paid.

Bills may be protested for better security. The holder goes to the drawee and *Why* H 3 demands better security if he will not accept. The notary public must do the same. The bill is then protested as above.

But. 1786. the time of signing the judgment is the time to compute the damages.

Lex Mercator. H 66. It may be accepted for the balance of the indorser. in such a case it must be protested. *H 27.* & *Lex Mercator.*

If the drawee refuses to pay, the drawee may have an action against him, if he had effects in his hands. So the drawee may ^{me} refuse the drawer if he has paid his bill when he had not effects in his hands. *1 Wilson 185.*

88th Lecture March 26th 1795

If a man has once accepted a bill he will, bound by it. notwithstanding he may refuse in consequence of the bankruptcy of the drawer. *Duggar. Blain vs. Peal.* But the holder may so conduct as to shew his abandonment of a claim upon the acceptor, as a partial written discharge of the account.

And ^{the} order, after acceptance, does not release the drawer. This is no abandonment & receipt of part of the money loaned. The drawer is no discharge of the acceptor, except as to that part.

A non security from the drawer is no discharge of the ^{acceptor}. (Danz. Elise v. Gelindo)

Where a man (Strang 433) has by the Law of the country where he lives, been discharged from any liability, in consequence of an acceptance, he is not to be made liable when he comes into England, tho' they have no such Law as will discharge him.

1 Will 262. Indorser is not discharged in consequence of part payment of Drawer.

If the acceptor has paid part of the bill the Drawer is discharge, unless he has been informed by protest. 1 Will 262 the acceptor is sued & held to bail, his bail pays the money, and the bill is indorsed by the payee to the (1 Will 46) bail. he can never sue the acceptor & drawer upon the bill for by payment to the payee, its negotiability is entirely destroyed. he has a different remedy.

Strang 441. 2 Brer 689: the indorser of a bill by discharge may be charged with out part payment to the drawer.

The remedies of the parties. The bill is not paid by the Drawee. Payee may bring his action upon the bill, or a sumptuous debt. But the general action is a special action on the case founded on the custom. In the declaration it was necessary formerly to state the custom at length. But now only state by the custom of Merchants.

A bill payable to a fictitious payee, is said by the courts to be payable to bearer.
3 Binn 183. H. Blac. 313

If the action is brought against the acceptor you must state that A. drew a bill on B. in favour of C. (presented for acceptance B. did accept. after C. presented for payment B. refused and so by the custom of Merchants became liable). If the indorsee brings he need only state in addition that he has a power from the payee. i.e. that C. indorsed it over to him &c

Where a man brings forward his action, and states those things which make him liable the assumption need not be stated, and Mr. Pease thinks that this applies to all cases. The reason ^{of} Page 538 (Case 409) is the same as in mercantile transactions. It may be asked what answer shall be given; not liable; it is as much an issue as can be

2 Wils. 253

When several persons ^{that} are liable are sued all of them, and all cens. are taken out, a payment of one is satisfaction of all the cens. except 2 Black. 469. 2 Wils. 115. 1 Strange 115. The case that have arisen. When the ^{the} cens. which must be paid & if the ^{of them} persons ^{has} been satisfied, it will be treated as a contempt of the court.

2 Wils. 89. 407. 10th 107. 110. 2 Wils. 114

and the court is not bound to take notice of the same.

Law Merchant

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Lecture 89th March 27th 1793

Perils of the sea. It never includes any captives
neither is it a deviation if driven out of their
course to avoid an enemy
that shall be deemed a loss of the vessel. about it
there is no rule. It gave very unusual time
unheard of till then 1799 good evidence of the
vessels being lost.

Insurance against enemies. includes all
persons who are enemies except pirates. But
if the master is insured against this means any
fraudulent conduct, and never includes
any of his negligence. 1264 The owner of the
crew could compel the master to go off
course from what he would then not be doing
was a deviation.

Restraint of princes. which is another case
but if the soldiers run the vessel and then
condemned, insurers are not liable

Charter party. is the lease of the ship, and it is
regulated by the common law where the charter
does not furnish the maritime law. But when
the owner furnishes the master &c. if she is
lost before she gets to the port of destination the
owner is not liable for the freight but if she
is lost on her return, not liable for the freight

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Law merchant

11329 36 to the first port of destination
but if the contract is to pay the freight
When the vessel returns, and she is lost on her
return no freight is to be paid. so too if
she is lost on return the freight became due
When she arrives at the first port of destination
and is lost on her return up the misman-
agement of the master, no freight is to
be paid either ante or in rem. so if she returns
without cargo

2 Bred 88 ::

If there has been great loss and the cargo
has been much damaged, the hirer may claim
for his cargo. in which case he is not liable
for freight

The owner of the vessel is liable for the misman-
agement of the master, as for his crew & servants. The
master may enter in to a charter party which may
bind the master and in a charter party
he contracts for necessities. By which the master and
vessel are liable. and the merchant is liable
for his cargo & yet he is not liable as soon
as the returns

Law Merchant

111

252 Lot of Botany Bay.

Where there are many owners, the majority govern, as if part wish to send the vessel a certain voyage, and part not, if a majority wish to send her she must go, and those who do not agree to the voyage is entitled to freight, and is liable for his share of the expense in fitting out, but those who wish the voyage may go to the court of admiralty, and by giving bonds for the security of safe return of the vessel may cut those who are opposed to it, off from all the profits and at discharge them.

Nov. 1884. 179. That 179. That a man is entitled to his wages at the port of delivery, and if the vessel is lost, they lose their wages, they will likewise lose their property, unless the master may pay for the cost of remuneration, by setting him on shore, and if the sailors conspire to make the master deliver his part of delivery, is punishable with death.
By the court and the law the common

If ~~the~~ ^{the} vessel part of the goods are
 thrown overboard. the loss must be averaged as
 if it has sailed an adad and B. has Pruzn. The
 sum is thrown over. the loss is averaged.

If one of the partners die. the Esr. has no right
 to carry on the partnership. but are entitled
 to one half of the profits. It is said that the
 surviving partners alone can sue. and be
 sued in every other respect. the right of the Esr.
 the same as of the testator. But by the surviving
 partners is a bankrupt. (Sol HHH 2nd 265) The
 Esr. is liable for partnership debts by a bill
 in Chancery in Eng. yet what objection to a
 bill in the Law?

A & B joint merchants, both dead. they are debts
 as joint merchants & separately. in the com-
 mon property go to pay company debts. But in their
 life time their private property is liable for com-
 any debts. But after their death the private prop-
 erty goes to pay private debts. ∴ Esr. must head partner
~~ship~~

The above Lectures upon Law Merchant
 were taken at the time Mr. Reeve delivered
 them without being afterwards revised. And
 the following lectures upon the same subject were
 taken in March 1794. when I first joined the office

2905 38-0



